

No. 1500

UNITED STATES CIRCUIT COURT of APPEALS
FOR THE NINTH CIRCUIT.

THE COLUMBIA VALLEY RAILROAD COMPANY,
Appellant,

vs.

THE PORTLAND AND SEATTLE RAILWAY COMPANY
(a Corporation),
Appellee.

TRANSCRIPT OF RECORD.

**Upon Appeal from the United States Circuit Court for the
Western District of Washington, Northern Division.**

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*In the Circuit Court of the United States for the
Western District of Washington.*

No. 1384.

THE COLUMBIA VALLEY RAILROAD COM-
PANY (a Corporation),

Plaintiff,

vs.

THE PORTLAND AND SEATTLE RAILWAY
COMPANY (a Corporation),

Defendant.

Bill of Complaint.

The said complainant, the Columbia Valley Rail-
road Company, complains against the said defend-
ant, and alleges the following facts, to wit:

I.

That said complainant, the Columbia Valley Rail-
road Company, now is and ever since the 16th day of
February, 1899, has been a corporation duly organ-
ized and existing under the laws of the State of
Washington, for the purpose of building, equipping,
operating or acquiring a railroad and telegraph line
from Wallula on the south bank of the Columbia
River in the State of Washington, thence across the
Columbia River at a point at or near Wallula, and
thence by some eligible route along the north bank of

the Columbia River to a point in the State of Washington on the Columbia River, at or near the mouth of the said river, and to maintain, operate, lease, construct or acquire the said railroad or telegraph line or lines, to carry freight or passengers thereon and transmit messages thereover, and to receive tolls for the carriage and transmission of the same, and to do all things necessary or proper for the accomplishment of the objects as specified in its articles of incorporation.

II.

That the defendant is a corporation organized under and in pursuance to the laws of the State of Washington, for the purpose of constructing and operating a railroad.

III.

That the complainant claims the right of way hereinafter described over the public lands of the United States hereinafter described under and by virtue of the provisions of the act of Congress approved March 3, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States."

That the said act of Congress among other things provides that the right of way through the public lands of the United States is thereby granted to any railroad company duly organized under the laws of any state or territory except the District of Colum-

bia, or by the Congress of the United States which shall have filed with the Secretary of the Interior a copy of its Articles of Incorporation and due proofs of its organization under the same to the extent of 100 feet on each side of the central line of the said road, also the right to take, from the public lands adjacent to the line of the said road, material, earth, stone and timber necessary for the construction of the said railroad; also ground adjacent to such right of way for station buildings, depots, machine-shops, sidetracks, turn-outs and water stations not to exceed in amount twenty acres for each station, to the extent of one station for each ten miles of its road.

The said act of Congress further provides that any railroad company desiring to secure the benefits of the said act, shall within twelve months after the location of any section of twenty miles of its road, if the same be upon surveyed land, and if upon unsurveyed land, within twelve months after the survey thereof by the United States, file with the Register of the land office for the District where said land is located a profile of its road, and upon approval thereof by the Secretary of the Interior, the same shall be noted upon the plats in said office, and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way; provided, that if any section of such road shall not be completed within five years after the location

of such section, the rights granted by such act shall be forfeited as to any such uncompleted section of said road.

It is further provided in said act of Congress that the act shall not apply to any lands within the limits of any military, park, or Indian Reservation, or other lands specially reserved from sale, unless such right of way shall be provided for by treaty stipulation, or by act of Congress heretofore passed.

That at all the times hereinafter mentioned the said act of Congress was and is in full force and effect and unrepealed and reference is hereby made to the said Act of Congress at 18 Statute, page 482.

IV.

That in order to carry out the provisions of the said act of Congress, the Honorable Secretary of the Interior, from time to time made regulations concerning the procedure to be followed by any railroad company in obtaining a right of way as provided in said act over the public lands of the United States, and prior to the year 1899 (“Prior to the year” interlined, and by a circular of August 7, 1899, erased), adopted and promulgated such regulations, which were to be followed thereafter, and which provided among other things that any railroad desiring to obtain the benefits of the said act should file through the office of the Commissioner of the General Land Office, or the Register of the land district in which

the principal terminus of the road is to be located to be forwarded to the Secretary of the Interior;

First, a copy of its Articles of Incorporation duly certified to by the proper office of the company under its corporate seal or by the Secretary of the State or Territory were organized.

Second. A copy of the State or Territorial laws under which the company was organized, with the certificate of the Governor or Secretary of the State or Territory that the same is the existing law.

Third. When the said law directs that the Articles of Association or other papers connected with the organization be filed with any State or Territorial officer, the certificate of such officer that the same have been filed according to law with the date of the filing thereof.

The fourth rule relates to the acts of a company operating in another State or territory than that in which it is incorporated, and is not deemed pertinent to this suit.

Fifth. The official statement under the seal of the proper officer that the organization has been completed; that the company is fully authorized to proceed with the construction of the road according to the existing law of the State or Territory in which it is incorporated.

Sixth. An affidavit by the President under the seal of the company, showing the names and desig-

nations of its officers at the date of the filing of the proof.

Seventh. If certified copies of the existing laws regarding such corporations, and of new laws as passed from time to time be forwarded to the office of the Secretary of the Interior, by the Governor or Secretary of any State or territory, a company organized in such State or Territory may file, in lieu of the requirements of the second subdivision of this paragraph, a certificate of the governor or secretary of the State or Territory, that no change has been made since a given date, not later than that of the laws last forwarded.

It is further provided in the said regulations that if the lands which the said railroad is to traverse are located in more than one district, duplicate maps and field-notes need be filed in but one district, and single sets in the others.

It is further provided in said regulations that the said maps must be drawn on tracing linen in duplicate and must be strictly conformable to the field-notes of the survey of the line of route or of the station grounds, and that the field-notes of the survey shall be written along the line on the map, or if the map would thereby be too much crowded to be easily read, then duplicate field-notes shall be filed separate from the map in such form that they may be folded for filing, and that a sufficient number of stations

shall be shown on the map to make it convenient to follow the field-notes, and that the map shall show the lines of reference of initial and terminal points, with their courses and distances, and that public surveys represented on the map should have their entire boundaries drawn, and on all lands affected by the right of way. The smallest legal subdivision (40-acre tracts and lots) must be shown, and that the termini of the line of road should be fixed by reference by course and distance to the nearest existing corner of the public survey, and that the map, field-notes, engineer's affidavit and president's certificate, as provided in said regulations shall each show these connections, and that the company must certify that the road is to be operated as a common carrier of passengers and freight.

And that when the line of survey crosses a township or section line of the public survey the distance to the nearest existing corner shall be ascertained and noted, which the map and field-notes shall show at the points of intersection.

It is further provided that the engineer's affidavit and president's certificate required as aforesaid must be written on the map, and must both designate by termini and length in miles and decimals the line and route for which right of way application is made.

That appropriate forms are provided by the said regulations, to be followed. Reference is hereby made to the said regulations.

V.

That in pursuance of the said objects of its incorporation and for the purpose of obtaining a right of way over the public lands of the United States wherever its said railroad shall traverse the same, and in accordance with the terms of the said act of Congress, and the said regulations adopted in pursuance thereof, the complainant, the Columbia Valley Railroad Company, on the ——— day of ———, 1899, duly filed with the Honorable Secretary of the Interior at Washington, in the District of Columbia, a copy of its Articles of Incorporation, and due proofs of its organization under the same, duly certified to by the President of the said complainant, under its corporate seal, together with a duly certified copy of the laws of the said State of Washington, under which said corporation was organized, in all respects as required by the said law and the said regulations, and the proper certificates of the officers of the said State of Washington as required by the said regulations, that the said articles had been filed with the said officer according to law, with the date of filing thereof, and that the organization of the said corporation had been completed, and that the company was fully authorized to proceed with the construction of its said road according to the existing law of the said state, and the affidavit by the said L. Gerlinger, who was then and there the President of the said corpora-

tion, showing the names and designations of its officers at the date of filing the said proofs, and in all respects conforming to the requirements of the said act of Congress and of the said regulation.

VI.

That thereupon and by virtue of the said act of Congress and of the said regulations, and of the compliance therewith by the complainant as aforesaid, the complainant, the Columbia Valley Railroad Company on the 27th day of December, 1899, became entitled to acquire a right of way over, through and across the public lands of the United States designated in said act along its said route of railroad, to consist of a strip of land to the extent of 100 feet in width on each side of the central line of its said railroad, through all public lands along said route as granted by said act of Congress, and to survey, locate, construct, operate and maintain its said railway across said lands over said right of way as aforesaid, and particularly through and over the public lands hereinafter more particularly described lying along the route of the said railroad.

VII.

That for the purpose of fixing, designing and locating its said right of way granted as aforesaid, the complainant, the Columbia Valley Railroad Company, caused the central line of its said railroad to

be definitely surveyed and located on the ground, beginning at a point at Station 4438-38 which is a point in the State of Washington, County of Yakima, directly opposite Wallula in the northwest quarter of section 21, township 7 north, of range 31 east, W. M., and is south 72 degrees 27 minutes west 5320 feet from the corner to sections 15, 16, 21 and 22, in the township and range aforesaid, and thence to station 3379-93, which is a point south 23 degrees 35 minutes west 2880 feet from the northeast corner of section 1, township 5 north, of range 28 E., W. M., a length of twenty miles, and continuing beginning at station 3379-93, which is a point south 23 degrees 35 minutes west 2880 feet from the northeast corner of section 1, township 5 north of range 28 E., W. M., thence to station 2322-98, which is a point south 16 degrees 10 minutes west 1955 feet from the quarter section corner to section 13, 14, township 5 N., R. 25 E., W. M., a length of twenty miles.

That the complainant began the survey and location on the ground of the said route of its railroad as aforesaid on the 22d day of April, 1899, and finished the survey and location of the first twenty miles thereof as aforesaid on the 6th day of May, 1899, and began the survey and location of the second twenty miles as aforesaid on the 6th day of May, 1899, and finished the same on the 15th day of May, 1899, and began the survey of the third section of twenty miles

on the 15th day of May, 1899, and finished the same on the 24th day of May, 1899, and began the survey of the fourth section of twenty miles thereof on the 24th day of May, 1899, and finished the same on the 6th day of June, 1899, and began the survey of the fifth section of twenty miles thereof on the 6th day of June, 1899, and finished the same on the 16th day of June, 1899, and began the survey of the sixth section of twenty miles thereof on the 16th day of June, 1899, and finished the same on the 29th day of June, 1899, and began the survey of the seventh section of twenty miles thereof on the 20th day of April, 1899, and finished the same on the 29th day of June, 1899, and began the eighth section on April 20th and finished same on June 27th, 1899.

That the said central line of the route of the said railroad as so surveyed was at the time of making such surveys marked upon the ground by stakes such as are usually employed by surveyors of railroad lines, driven in the ground at the end of each 100 feet of the said line commencing at the said beginning point described as aforesaid and extending thence along said surveyed route to the ending point of the first 20 miles, and from thence along said surveyed route to the end of the second 20 miles, and in the same manner to the end of the said seventh section thereof as aforesaid. Each of the said stakes represented a station of 100 feet, and each of the said

stakes was marked and numbered in the manner usual with surveyors of railroad lines, and the said central line of the rote of the said railroad as so surveyed and marked upon the ground in the usual and customary way of surveyors, surveying and locating the line of route of railroads, and the same at all times was then and has since been readily to be observed and traced upon the ground.

VIII.

That immediately after each of the said sections of twenty miles of the survey were made as aforesaid, the complainant caused correct maps or profiles thereof respectively to be made, and thereupon, J. W. Coover, who was then and there the duly authorized and appointed chief engineer of the complainant, duly made his affidavit, which was then and there duly sworn and subscribed to before a notary public authorized to administer said oath, and which affidavit was written upon each of the said maps or profiles, and each of which affidavits designated by termini and length in miles and decimals, the line of route for said right of way as aforesaid, and each of which affidavits was to the effect that the said survey of the said line of railway described and surveyed as aforesaid, and appearing upon the said map way made by him as chief engineer of the said company, the complainant herein, and under its authority, and gave the date of the beginning and of the completion

of the said survey of section of twenty miles shown by the said map, and that the survey of the said line was accurately represented on each of the said maps and by the field-notes accompanying each of them, and the said affidavit which was written upon the map showing the eighth section of twenty miles of the said railroad described the beginning point of the said section as follows;

Beginning at station 931-47, which is a point 1226 feet south and 1955 feet west from the quarter section corner of sections 34 and 35, township 3 north, of range 11 east of the Willamette Meridian, to station 1987-38, which is a point 912 feet east and 1086 feet south of the quarter section to sections 27 and 28, township 3 N., R. 8 east of the Willamette Meridian, a length of twenty miles, and that the said survey was commenced on the 20th day of April, 1899, and ended on the 27th day of June, 1899, and that the survey of the said line is accurately represented on the said map and by the accompanying field-notes thereto.

That L. Gerlinger, who was then the president of the complainant corporation, duly made a certificate for each of the aforesaid maps, wherein he certified that he was the president of the complainant company; that, the said J. W. Coover, who subscribed the affidavit accompanying each of the said maps, was the chief engineer of the said company; that

the survey of the said railroad as accurately represented on each of the said maps and by the field-notes thereof, was made under the authority of the company; that the company was duly authorized by its articles of incorporation to construct the said railroad upon the location shown upon the said maps; that the survey as represented on each of the said maps and field-notes thereof was adopted by resolution of its Board of Directors on a certain day in said certificate stated, as definite location of the said railroad, and which survey as to each map described the beginning and terminal points shown; and that each of the said maps had been prepared to be filed in order to obtain the benefits of the act of Congress approved March, 3, 1875, entitled "An act granting to the railroads the right of way through the public lands of the United States," and each of which said certificates further certify that the said railroad was to be operated as a common carrier of passengers, and each of which certificates was officially duly signed by said L. Gerlinger, as president of the said complainant company, and attested by George W. Stapleton, who was then and there the duly appointed and acting secretary of the said corporation, and which certificates respectively, were written upon each of the said maps respectively, and the said certificate written upon the eighth section thereof as aforesaid desig-

nated the 27th day of December, 1899, as the date when the said survey was adopted by the said Board of Directors as aforesaid.

That the said maps as aforesaid were made in all respects conformably to the regulations of the Secretary of the Interior hereinbefore described and referred to, and conformably to the field-notes of the survey of the line of the said route for the whole distance of the said 160 miles.

That the said J. W. Covert, as chief engineer, in making the said surveys made accurate field-notes thereof so complete that the said line may be retraced from them on the ground to conform to the said regulations in every respect.

That the said maps and field-notes were each duly filed with the Board of Trustees of the complainant and duly approved by the said Board of Trustees, and the said line of the said railroad as so designated and surveyed was duly adopted as the located line of the plaintiff for the purpose among other things of obtaining the benefits of the said act of Congress of March 3, 1875, hereinbefore mentioned, and the maps and field-notes of the eighth section thereof were approved and the line thereof located by the said Board of Trustees on the 27th day of December, 1899.

IX.

That thereafter the maps of the first, second,

third and fourth sections thereof were duly filed in the land office of the Walla Walla land district at Walla Walla, Washington, on the 21st day of March, 1900, and maps and field-notes of the fifth and sixth and seventh sections thereof were duly filed in the land office of the Vancouver Land District, at Vancouver, Washington, on the 19th day of October, 1900, and the maps and profiles of the eighth section thereof were duly filed in the land office of the Vancouver land district at Vancouver, Washington, on the 29th day of September, 1900, the said Walla Walla land district at Walla Walla, Washington, being the land district in which the land traversed by the line described in the maps so filed, was situated, and the Vancouver land district being the land district in which the land traversed by the line described in the maps so filed at Vancouver, was situated. And each of said maps were duly filed of record by the Register of the said land offices respectively, as required by the said act of Congress and the regulations thereunder, and have ever since remained and are now of record in said land offices.

That duplicates of each of the said maps were respectively transmitted to the Honorable Secretary of the Interior, immediately after the same were approved by the said Board of Trustees as aforesaid, and the said Honorable Secretary received and

filed the same as required by the said act of Congress, and the regulations of the said department described as aforesaid, and as to the said eighth section of the said land as aforesaid, the map thereof was duly approved by the said Honorable Secretary of the Interior at Washington, D. C., on the 29th day of September, 1900.

X.

That the said right of way (being 100 feet on each side of the central line thereof), and said line of railway as so surveyed and located and so designated upon the said maps as aforesaid traverse lot 1 in section 29 and lots 3 and 5 of section 30, township 3 north, of range 10 east of the Willamette Meridian, and lot 5 of section 25 and lot 1 of section 35, and lots 1, 2, 3 and 4 of sections 23, and lots 2, 3 and 4 of section 32, all in township 3 north, of range 9 east of the Willamette Meridian, and lot 4 of section 35 in township 3 north of range 8 east of the Willamette Meridian.

That at the time of the organization of the plaintiff, the making and filing of its articles of incorporation under the laws of the State of Washington, and at the date of the filing of the copy of its articles of incorporation, and the proofs of its organization under the same, with the Secretary of the Interior, and at the time of making the said surveys, maps and field-notes and at the time of ap-

proving the said maps and adopting the said line of railway as aforesaid by the Board of Directors of the plaintiff, as aforesaid, all of the above-described land and each and every subdivision thereof were public lands of the United States, and were not then or there within the limits of any military, park, or Indian Reservation and were not specially reserved from sale, and were and are subject to the grant made in the said act of Congress, on March 3, 1875, hereinbefore referred to.

XI.

That by reason of the premises this complainant, the Columbia Valley Railroad Company, prior to the 27th day of Dec., 1899, became and ever since has been and now is the owner of the right of way through all the public lands above-described traversed by the said railway to the extent of 100 feet on each side of the central line of its railroad as the same was so surveyed, located and adopted from the said point opposite Wallula to the said point described as the end of the survey of the said one hundred and sixty miles thereof.

XII.

That all the said steps taken as aforesaid by the plaintiff were taken in good faith for the purpose of constructing a railroad along the route described in its articles of incorporation, and the plaintiff at all times since its incorporation has been and is now

actively engaged in prosecuting the said enterprise, and desires and intends to construct with reasonable dispatch, and operate a railroad over said line described in its articles of incorporation, from a point near the mouth of the Columbia River for the carriage of freight and passengers in accordance with its articles of incorporation, and is in all respects conforming to and intends to conform to the provisions of the said act of Congress hereinbefore referred to, and the regulations of the said Secretary of the Interior relative to survey, location and construction of its said railroad.

XIII.

That about the day of 1905, the defendant, the Portland and Seattle Railway Company, through its officers, agents, servants and employees, wrongfully and without authority of law, or the consent of the plaintiff entered upon a part of the right of way hereinbefore described, which lays upon the public lands of the United States hereinbefore described, and particularly upon the following described parts thereof.

Lots 1, 2, 3 and 4 of section 33, and lots 2, 3 and 4 of section 32, in township 3 north, of range 9 east of the Willamette Meridian.

That the defendant has upon the last named premises sent its men, teams and apparatus and on the complainant's said line of railway as hereinbefore

described and is engaged in excavating the ground thereon, and making fills, cuts, and embankments with intent to construct and operate a line of railway over the complainant's said line of railway on the said premises, and the defendant intends and declares that it will continue the said work of constructing its said railway over and upon the said right of way of complainant from its beginning point to its ending point as hereinbefore described, over and across the said public lands as aforesaid, and has occupied and intends to occupy for the purpose of its said railroad the complainant's said right of way through its entire line as described in this bill of complaint.

That the defendant pretends to own and claims the right to occupy the complainant's said right of way for the construction of the defendant's road, and by its agents, servants, employees, contractors and subcontractors is continually trespassing upon the said right of way as aforesaid.

That unless the defendant shall be restrained and enjoined from continuing its said trespass as aforesaid, the complainant will be required to bring a multiplicity of suits against the defendant and against its several employees, servants and agents to prevent the said injury and the said wrongful acts and that the complainant's injury as aforesaid cannot be compensated in damages.

XIV.

And the complainant charges that the value of the said right of way over the lands herein described in township 3 north, of range 10 east, and township 3 north, of range 9 east, and township 3 north, of range 8 east, as aforesaid exceeds the sum of two thousand (\$2,000.00) dollars, and the matter in dispute herein exceeds the sum of two thousand (\$2,000.00) dollars, exclusive of interest and costs.

XV.

That complainant has no plain, speedy or adequate remedy at law.

XVI.

To the end that the complainant may obtain the relief to which it is entitled in the said cause, it now prays the Court to grant it due process by subpoena directed to the said Portland and Seattle Railway Company, defendant hereinbefore named, requiring it to appear herein and answer, but not under oath, the same being expressly waived, the several allegations in this, the complainant's contained, and that the said defendant, the Portland and Seattle Railway Company, and its servants, agents and employees and all others under or by its direction from entering upon any of the said land described in this bill in township 3 north, of range 10 east, and township 3 north of range 9 east, and township 3 north, of range 8 east of the Willamette Meridian,

within its said right of way, and from constructing any part of its said railway thereon, and from making any excavations or doing any of the things aforesaid, which obstruct, retard or prevent the complainant from using its said right of way and from constructing and operating its said line of railway as described in this bill of complaint, and that pending this suit, a preliminary injunction shall be granted against the defendant, the Portland and Seattle Railway Company enjoining and restraining the said defendant from doing any of the aforesaid acts, and that pending the decision upon the application for a preliminary injunction herein, that the Court may grant an order restraining the said acts until the decision upon the said motion, and for such other and further relief as to the Court may seem meet in equity, and for the complainant's costs and disbursements.

GEORGE W. STAPLETON,
Solicitor for the Complainant.

It is hereby consented that all papers subsequent hereto except writs and process may be served upon James P. Stapleton at his law office in the town of Vancouver, Washington.

GEORGE W. STAPLETON.

State of Oregon,
County of Multnomah,—ss.

I, L. Gerlinger, being first duly sworn, depose and say that I am the president of the plaintiff corporation; that I know the contents of the foregoing bill of complaint and the same is true as I verily believe.

L. GERLINGER.

Subscribed and sworn to before me this 1st day of February, 1906.

MARTIN L. PIPER,
Notary Public for Oregon.

[Endorsed]: Bill of Complaint. Filed in the U. S. Circuit Court, Western Dist. of Washington. Feb. 2, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

*United States Circuit Court for the Western District
of Washington.*

No. 1384.

COLUMBIA VALLEY RAILROAD COMPANY,
Complainant,

vs.

THE PORTLAND AND SEATTLE RAILWAY
COMPANY,
Defendant.

Appearance for Complainant.

To the Clerk of the Above-entitled Court:

You will please enter my appearance as solicitor for complainant in the above-entitled cause in the above-entitled court.

GEORGE W. STAPLETON,

Portland, Or.

[Endorsed]: Appearance. Filed Feb. 2, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Deputy Clerk.

*Circuit Court of the United States for the Western
District of Washington.*

COLUMBIA VALLEY RAILROAD COMPANY,

Complainant,

vs.

THE PORTLAND AND SEATTLE RAILWAY
COMPANY,

Defendant.

Demurrer to Bill of Complaint.

Comes now the defendant and demurs to the bill of complaint herein, and as grounds therefor specifies:

1. That said bill does not state facts which entitle the complainant to relief herein.

2. That this Court has no jurisdiction of the cause.

A. G. AVERY,
Solicitor for Defendant.

JAMES B. KERR,
of Counsel.

State of Washington,
County of King,—ss.

James B. Kerr being first duly sworn on oath says:

That he is an officer, to wit, assistant secretary of the defendant corporation above named, and is authorized to make, and makes this affidavit on its behalf; that the foregoing demurrer is not interposed for delay.

JAMES B. KERR.

Subscribed and sworn to before me this 22d day of February, 1906.

L. FRANK GORDON.

Notary Public in and for the State of Washington,
Residing at Seattle.

I, James B. Kerr, counsel for the defendant above named, hereby certify that the foregoing demurrer is in my opinion well taken in point of law.

JAMES B. KERR.

Papers in the above cause may be served upon the defendant, by delivering the same to the undersigned at the postoffice address given below.

JAMES B. KERR,
Vancouver, Clark County, Washington.

[Endorsed]: Demurrer. Filed in the U. S. Circuit Court, Western Dist. of Washington. Feb. 23, 1906. A. Reeves Ayres, Clerk. R. M. Hopkins, Dep.

*Circuit Court of the United States, Western District
of Washington.*

No. 1384.

COLUMBIA VALLEY RAILROAD COMPANY,
Complainant,

vs.

PORTLAND AND SEATTLE RAILWAY COM-
PANY,

Defendant.

Order Sustaining Demurrer to Bill of Complaint, etc.

This cause coming on to be heard upon the demurrer of the defendant to the bill of complaint herein, James B. Kerr appearing for the defendant in support of said demurrer, and Martin L. Pipes appearing for the complainant in opposition to said demurrer, and the Court being advised.

It is ordered that said demurrer be, and the same is hereby sustained.

It is further ordered that the complainant be allowed thirty days from this date within which to amend its bill of complaint.

Dated, February 23d, 1906, by the Court.

C. H. HANFORD,
Judge.

[Endorsed]: Order. Filed in the U. S. Circuit Court, Western Dist. of Washington. Feb. 23, 1906. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

*In the Circuit Court of the United States for the
Western District of Washington.*

THE COLUMBIA VALLEY RAILROAD COM-
PANY (a Corporation),

Plaintiff,

vs.

THE PORTLAND AND SEATTLE RAILWAY
COMPANY (a Corporation),

Defendant.

Amended Bill of Complaint.

The said complainant, the Columbia Valley Railroad Company, complains against the said defendant by this, its amended bill of complaint, and alleges the following facts, to wit:

I.

That said complainant, the Columbia Valley Railroad Company, now is and ever since the 16th day of February, 1899, has been a corporation duly organized and existing under the laws of the State of Washington, for the purpose of building, equipping, operating or acquiring a railroad and telegraph line from Wallula on the south bank of the Columbia River in the State of Washington, thence across the Columbia River at a point at or near Wallula, and thence by some eligible route along the north bank of the Columbia River to a point in the State of Washington on the Columbia River, at or near the mouth of the said river, and to maintain, operate, lease, construct or acquire the said railroad or telegraph line or lines, to carry freight or passengers thereon and transmit messages thereover, and to receive tolls for the carriage and transmission of the said, and to do all things necessary or proper for the accomplishment of the objects as specified in its articles of incorporation.

II.

That the defendant is a corporation organized under and in pursuance to the laws of the State of Washington, for the purpose of constructing and operating a railroad.

III.

That the complainant claims the right of way here-

inafter described over the public lands of the United States hereinafter described under and by virtue of the provisions of the act of Congress approved March 3, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States."

That the said act of Congress among other things provides that the right of way through the public lands of the United States is thereby granted to any railroad company duly organized under the laws of any state or territory except the District of Columbia, or by the Congress of the United States which shall have filed with the Secretary of the Interior a copy of its Articles of Incorporation and due proofs of its organization under the same to the extent of 100 feet on each side of the central line of the said road, also the right to take, from the public lands adjacent to the line of the said road material, earth, stone, and timber necessary for the construction of the said railroad; also ground adjacent to such right of way for station buildings, depots, machine-shops, side-tracks, turn-outs and water stations not to exceed in amount twenty acres for each station, to the extent of one station for each ten miles of its road.

The said act of Congress further provides that any railroad company desiring to secure the benefits of the said act, shall within twelve months after the location of any section of twenty miles of its road, if

the same be upon surveyed land, and if upon unsurveyed land, within twelve months after the survey thereof by the United States, file with the Register of the land office for the district where said land is located a profile map of its road, and upon approval thereof by the Secretary of the Interior, the same shall be noted upon the plats in said office, and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way; provided, that if any section of such road shall not be completed within five years after the location of such section, the rights granted by such act shall be forfeited as to any such uncompleted section of said road.

It is further provided in said act of Congress that the act shall not apply to any lands within the limits of any military park, or Indian Reservation, or other lands specially reserved from sale, unless such right of way shall be provided for by treaty stipulation, or by act of Congress heretofore passed.

That at all the times hereinafter mentioned the said act of Congress was and is in full force and effect and unrepealed and reference is hereby made to the said Act of Congress at 18b Statute, page 482.

IV.

That in order to carry out the provisions of the said act of Congress, the Honorable Secretary of the

Interior, from time to time made regulations concerning the procedure to be followed by any railroad company in obtaining a right of way as provided in said act over the public lands of the United States, and on the 4th day of November, 1899, and by a circular of August 7th, 1899, adopted and promulgated such regulations, which were to be followed thereafter, and which provided among other things that any railroad desiring to obtain the benefits of such act should file through the office of the Commission of the General Land Office, or the Register of the land district in which the principal terminus of the road is to be located to be forwarded to the Secretary of Interior;

First. A copy of its articles of incorporation duly certified to by the proper officer of the company under its corporate seal or by the Secretary of the State or Territory where organized.

Second. A copy of the State or Territorial laws under which the company was organized, with the certificate of the Governor or Secretary of the State or Territory that the same is the existing law.

Third. When the said law directs that the Articles of Association or other papers connected with the organization be filed with any State or Territorial officer, the certificate of such officer that the same have been filed according to law with the date of the filing thereof.

The fourth rule relates to the acts of a company operating in another state or territory than that in which it is incorporated, and is not deemed pertinent to this suit.

Fifth. The official statement under the seal of the proper officer that the organization has been completed; that the company is fully authorized to proceed with the construction of the road according to the existing law of the State or Territory in which it is incorporated.

Sixth. An affidavit by the President under the seal of the company, showing the names and designations of its officers at the date of filing of the proof.

Seventh. If certified copies of the existing laws regarding such corporations, and of new laws as passed from time to time be forwarded to the office of the Secretary of the Interior, by the Governor or Secretary of any State or Territory, a company organized in such State or Territory may file, in lieu of the requirements of the second subdivision of this paragraph, a certificate of the Governor or Secretary of the State or Territory, that no change has been made since a given date, not later than that of the laws last forwarded.

It is further provided in the said regulations that if the lands which the railroad is to traverse are located in more than one district duplicate maps and

field-notes need be filed in but one district, and single sets in the others.

It is further provided in said regulations that the said maps must be drawn on tracing linen in duplicate and must be strictly conformable to the field-notes of the survey of the line of route or of the station grounds, and that the field-notes of the survey shall be written along the line on the map, or if the map would thereby be too much crowded to be easily read, then duplicate field notes shall be filed separate from the map, in such form that they may be folded for filing, and that a sufficient number of stations shall be shown on the map to make it convenient to follow the field-notes and that the map shall show the lines of reference of initial and terminal points, with their courses and distances, and that public surveys represented on the map should have their entire boundaries drawn, and on all lands affected by the right of way. The smallest legal subdivision (40-acre tracts and lots) must be shown, and that the termini of the line of road should be fixed by reference by course and distance to the nearest existing corner of the public survey, and that the map, field-notes, engineer's affidavit and president's certificate, as provided in said regulations shall each show these connections, and that the company must certify that the road is to be operated as a common carrier of passengers and freight.

And that when the line of survey crosses a township or section line of the public survey, the distance to the nearest existing corner shall be ascertained and noted, which the map and field-notes shall show at the points of intersection.

It is further provided that the engineer's affidavit and president's certificate required as aforesaid must be written on the map, and must both designate by termini and length in miles and decimals the line and route for which right of way application is made.

That appropriate forms are provided by the said regulations to be followed. Reference is hereby made to the said regulations.

V.

That in pursuance of the said objects of its incorporation and for the purpose of obtaining a right of way over the public lands of the United States wherever its said railroad shall traverse the same, and in accordance with the terms of the said Act of Congress, and the said regulations adopted in pursuance thereof, the complainant, the Columbia Valley Railroad Company, on the — day of —, 1899, duly filed with the Honorable Secretary of the Interior at Washington, in the District of Columbia, a copy of its Articles of Incorporation, and due proofs of its organization under the same, duly certified to by the President of the said complaint, under its

corporate seal, together with a duly certified copy of the laws of the said State of Washington, under which said corporation was organized, in all respects as required by the said law and the said regulations, and the proper certificates of the officers of the said State of Washington as required by the said regulations, that the said articles had been filed with the said officer according to law, with the date of filing thereof, and that the organization of the said corporation had been completed, and that the company was fully authorized to proceed with the construction of its said road according to the existing laws of the said State, and the affidavit by the said L. Gerlinger, who was then and there the President of the said corporation, showing the names and designations of the its officers at the date of filing the said proofs, and in all respects conforming to the requirements of the said act of Congress and of the said regulation.

VI.

That thereupon and by virtue of the said act of Congress and of the said regulations, and of the compliance therewith by the complainant, the Columbia Valley Railroad Company on the 27th day of December, 1899, became entitled to acquire a right of way over, through and across the public lands of the United States designated in said act along its said route of railroad, to consist of a strip of land to the extent of 100 feet in width on each side of the central

line of its said railroad, through all public lands along said route as granted by said act of Congress, and to survey, locate, construct, operate and maintain its said railway across said lands over said right of way as aforesaid, and particularly through and over the public lands hereinafter more particularly described lying along the route of the said railroad.

VII.

That for the purpose of fixing, designating and locating its said right of way granted as aforesaid, the complainant, the Columbia Valley Railroad Company, caused the central line of its said railroad to be definitely surveyed and located on the ground beginning at a point at Station 4438-38, which is a point in the State of Washington, County of Yakima, directly opposite Wallula in the northwest quarter of the section 21, township 7 north, of range 31 east, W. M. and is south 72 degrees 27 minutes west 5320 feet from the corner to sections 15, 16, 21 and 22 in the township and range aforesaid, and thence to station 3379-93, which is a point south 23 degrees 35 minutes west 2880 feet from the northeast corner of section 1, township 5 north, of range 28 E., W. M., a length of twenty miles, and continuing beginning at station 3379-93, which is a point south 23 degrees 35 minutes west 2880 feet from the northeast corner of section 1, township 5 north, of range 28 E., W. M., thence to station 2522-98, which is a point south 16

degrees 10 minutes west 1955 feet from the quarter section corner to sections 13 and 14, township 5 N., R. 25 E., W. M., a length of twenty miles.

That the complainant began the survey and location on the ground of the said route of its railroad as aforesaid on the 22d day of April, 1899, and finished the survey and location of the first twenty miles thereof as aforesaid on the 6th day of May, 1899, and began the survey and location of the second twenty miles as aforesaid on the 6th day of May, 1899 and finished the same on the 15th day of May, 1899, and began the survey of the third section of twenty miles on the 15th day of May, 1899, and finished the same on the 24th day of May, 1899, and began the survey of the fourth section of twenty miles thereof on the 24th day of May, 1899, and finished the same on the 6th day of June, 1899, and began the survey of the fifth section of twenty miles thereof on the 6th day of June, 1899, and finished the same on the 16th day of June, 1899, and began the survey of the sixth section of twenty miles thereof on the 16th day of June, 1899, and finished the same on the 29th day of June, 1899, and began the survey of the seventh section of twenty miles thereof on the 20th day of April, 1899, and finished the same on the 29th day of June, 1899, and began the survey of the eighth section on April 20th, 1899, and finished the same on June 27, 1899.

That the said central line of the route of the said railroad as so surveyed was at the time of making such surveys marked upon the ground by stakes such as are usually employed by the surveyors of railroad lines, driven in the ground at the end of each 100 feet of the said line commencing at the said beginning point described as aforesaid and extending thence along said surveyed route to the ending point of the first 20 miles, and from thence along said surveyed route to the end of the second 20 miles, and in the same manner to the end of the said seventh section thereof as aforesaid. Each of the said stakes represented a station of 100 feet, and each of the said stakes was marked and numbered in the manner usual with surveyors of railroad lines, and the said central line of the route of the said railroad as so surveyed and marked upon the ground in the usual and customary way of surveyors, surveying and locating the line of route of railroads, and the same at all times was then and has since been readily to be observed and traced upon the ground.

VIII.

That immediately after each of the said sections of twenty miles of the survey were made as aforesaid, the complainant caused correct maps or profiles thereof respectively to be made, and thereupon, J. W. Coovert, who was then and there the duly authorized and appointed chief engineer of the com-

plainant, duly made his affidavit, which was then and there duly sworn and subscribed to before a notary public authorized to administer said oath, and which affidavit was written upon each of the said maps or profiles, and each of which affidavits designated by termini and length in miles and decimals, the line of route for said right of way as aforesaid, and each of which affidavits was to the effect that the said survey of the said line of railway described and surveyed as aforesaid, and appearing upon the said map was made by him as chief engineer of the said company, the complainant herein, and under its authority, and gave the date of the beginning and of the completion of the said survey of the section of twenty miles shown by the said map, and that the survey of the said line was accurately represented on each of the said maps and by the field-notes accompanying each of them and the said affidavit which was written upon the map showing the eighth section of twenty miles of the said railroad described the beginning point of the said section as follows:

Beginning at Station 931—47, which is a point 1226 feet south and 1955 feet west from the quarter section corner to sections 34 and 35, township 3 north, of range 11 east of the Willamette Meridian, to station 1987—38, which is a point 912 feet east and 1086 feet south of the quarter section to sec-

tions 27 and 28, township 3 N., R. 8 east, of the Willamette Meridian a length of twenty miles, and that the said survey was commenced on the 20th day of April, 1899, and ended on the 27th day of June, 1899. and that the survey of the said line is accurately represented on the said map and by the accompanying field-notes thereto.

That L. Gerlinger, who was then the president of the complainant corporation, duly made a certificate for each of the aforesaid maps, wherein he certified that he was the president of the complainant company; that the said J. W. Covert, who subscribed the affidavit accompanying each of the said maps was the chief engineer of the said company; that the survey of the said railroad as accurately represented on each of the said maps and by the field-notes thereof, was made under the authority of the company; that the company was duly authorized by its articles of incorporation to construct the said railroad upon the location shown upon the said maps; that the survey as represented on each of the said maps and field-notes thereof was adopted by resolution of its Board of Directors on a certain day in said certificate stated, as the definite location of the said railroad, and which survey as to each map described the beginning and terminal points shown; and that each of the said maps had been prepared to be filed in order to ob-

tain the benefits of the act of Congress approved March 3, 1875, entitled "An act granting to the railroads the right of way through the public lands of the United States," and each of which said certificates further certify that the said railroad was to be operated as a common carrier of passengers, and each of which certificates was officially duly signed by said L. Gerlinger, as president of the complainant company, and attested by George W. Stapleton, who was then and there the duly appointed and acting secretary of the said corporation, and which certificates respectively, were written upon each of the said maps respectively, and the said certificate written upon the eighth section thereof as aforesaid designated the 27th day of December, 1899, as the date when the said survey was adopted by the said Board of Directors as aforesaid.

That the said maps as aforesaid were made in all respects conformably to the regulations of the Secretary of the Interior hereinbefore described and referred to, and conformably to the field-notes of the survey of the line of the said route for the whole distance of the said 160 miles.

That the said J. W. Coover, as chief engineer, in making the said surveys made accurate field-notes thereof so complete that the said line may be retraced from them on the ground to conform to the said regulations in every respect.

That the said maps and field-notes were each duly filed with the Board of Trustees of the complainant and duly approved by the said Board of Trustees and the said line of the said railroad as so designated and surveyed was duly adopted as the located line of the plaintiff for the purpose among other things of obtaining the benefits of the said act of Congress of March 3, 1875, hereinbefore mentioned, and the maps and field-notes of the eighth section thereof were approved and the line thereof located by the said Board of Trustees on the 27th day of December, 1899.

IX.

That thereafter the maps of the first, second, third and fourth sections thereof were duly filed in the land office of the Walla Walla land district at Walla Walla, Washington, on the 21st day of March, 1900, and the maps and field-notes of the fifth, sixth and seventh sections thereof were duly filed in the land office of the Vancouver Land District, at Vancouver, Washington, on the 19th day of October, 1900, and the maps and profiles of the eighth section thereof were duly filed in the land office of the Vancouver land district at Vancouver, Washington, on the 29th day of December, 1900, the said Walla Walla land district at Walla Walla, Washington, being the land district in which the land traversed by the line described in the maps so filed was situated, and the

Vancouver land district being the land district in which the land traversed by the line described in the maps so filed at Vancouver was situated. And each of said maps were duly filed of record by the register of the said land offices respectively, as required by the said act of Congress and the regulations thereunder, and have ever since remained and are now of record in said land office.

That duplicates of each of the said maps were respectively transmitted to the Honorable Secretary of the Interior immediately after the same were approved by the said Board of Trustees as aforesaid, and the said Honorable Secretary received and filed the same as required by the said act of Congress and the regulation of the said department described as aforesaid, and as to the said eighth section of the said land as aforesaid, the map thereof was duly approved by the said Honorable Secretary of the Interior at Washington, D. C., on the 29th day of September, 1900.

X.

That the said right of way (being 100 feet on each side of the central line thereof) and said line of railway as so surveyed and located and so designated upon the said maps as aforesaid traverse lot 1 in section 29 and lots 3 and 5 of section 30, township 3 north of range 10 east of the Willamette meridian, and lot 5 of section 25, and lot 1 of section 35,

and lots 1, 2, 3 and 4 of section 23, and lots 2, 3 and 4 of section 32, all in township 3 north, of range 9 east of the Willamette meridian, and lot 4 of section 35 in township 3 north of range 8 east of the Willamette meridian.

That at the time of the organization of the plaintiff, the making and filing of its Articles of Incorporation under the laws of the State of Washington, and at the date of the filing of the copy of its articles of incorporation, and the proofs of its organization under the same, with the Secretary of the Interior, and at the time of making the said surveys, maps and field-notes, and at the time of approving the said maps and adopting the said line of railway as aforesaid by the Board of Directors of the plaintiff, as aforesaid, all of the above described land and each and every subdivision thereof were public lands of the United States, and were not then or there within the limits of any military park or Indian reservation, and were not specially reserved from sale, and were and are subject to the grant made in the said act of Congress on March 3, 1875, hereinbefore referred to.

XI.

That by reason of the premises this complainant, the Columbia Valley Railroad Company, prior to the 27th day of December, 1899, became and ever since has been and now is the owner of the right of

way through all the public lands above described traversed by the said railway to the extent of 100 feet on each side of the central line of its said railroad as the same was so surveyed, located and adopted from the said point opposite Wallula to the said point described as the end of the survey of the said one hundred and sixty miles thereof.

XII.

That all the said steps taken as aforesaid by the plaintiff were taken in good faith for the purpose of constructing a railroad along the route described in its articles of incorporation, and the plaintiff at all times since its incorporation has been and now is actively engaged in prosecuting the said enterprise, and desires and intends to construct with reasonable dispatch, and operate a railroad over said line described in its articles of incorporation, from a point opposite Wallula to a point near the mouth of the Columbia River for carriage of freight and passengers in accordance with its articles of incorporation, and is in all respects conforming to and intends to conform to the provisions of the said act of Congress hereinbefore referred to, and the regulations of the said Secretary of the Interior relative to survey, location and construction of its said railroad.

XIII.

That about the — day of ———, the defend-

ant, the Portland and Seattle Railway Company, through its officers, agents, servants and employees, wrongfully and without authority of law, or the consent of the plaintiff entered upon a part of the right of way hereinbefore described, which lays upon the public lands of the United States hereinbefore described, and particularly upon the following described parts thereof.

Lots 1, 2, 3 and 4 of section 33, and lots 2, 3 and 4 of section 32, in township 3 north of range 9 east of the Willamette Meridian.

That the defendant has upon the last-named premises sent its men, teams and apparatus, and on the complainant's said line of railway as hereinbefore described and is engaged in excavating the ground thereon, and making fills, cuts and embankments with intent to construct and operate a line of railway over the complainants' said line of railway on the said premises, and the defendant intends and declares that it will continue the said work of constructing its said railway over and upon the said right of way of complainant from its beginning point to its ending point as hereinbefore described, over and across the said public lands as aforesaid, and has occupied and intends to occupy for the purpose of its said railroad the complainant's said right of way through its entire line as described in this bill of complaint.

That the defendant disputes the right and title of the plaintiff to the right of way hereinbefore described over the public lands hereinbefore described, upon the ground that more than five years have elapsed since the location of the said eighth section of twenty miles of the plaintiff's said road as aforesaid, and that the said eighth section of the said railroad has not been completed within five years from the said location, and claims and pretends that under and by virtue of the provisions of the said act of March 3, 1875, the right and title of the plaintiff to the right of way over the said public lands hereinbefore described were and are forfeited as to the said section of said road, and claims the said alleged forfeiture under and by virtue of the provisions of section 4 of the said act of March 3, 1875, which is to the effect that if any section of the said road shall not be completed within five years after the location of the section, the rights herein granted shall be forfeited as to any such uncompleted section of said road; and the defendant pretends and claims that by virtue of the said provisions, the failure of the plaintiff to complete the said section within the said five years of itself and without any judicial proceeding or Congressional action works such forfeiture.

The defendant further pretends and claims the right to go upon the plaintiff's said right of way

and to build its said road thereon by virtue of the various acts of Congress.

It claims a right paramount to the plaintiff's right to enter upon and construct its road over lot 5 of section 25, lot 1 of section 32, in township 3 N., R. 9 east of the Willamette Meridian, and lot 4 in section 35, Tp. 3 north, range 8 east of the Willamette Meridian, under and by virtue of the act of Congress of date July 1, 1898, which act, among other things, in substance and effect granted to the Northern Pacific Railroad Company, or its lawful successors, the right upon the relinquishment of other lands within the grant of the said Northern Pacific Railroad Company, to select in lieu of the land relinquished, and equal quantity of certain public lands, surveyed or unsurveyed, not mineral or reserve, and not valuable for stone, iron or coal and free from valid adverse claim and not occupied by settlers at the time of such location, situated in any State or Territory into which the said railroad grant extended; and among other things the said grant provided in section 1 thereof "that the Secretary of the Interior shall from time to time ascertain, and as soon as conveniently may be done cause to be prepared and delivered to the said railroad or its successor in interest a list or lists of the several tracts which had been purchased or settled upon or occupied, and which were claimed by purchasers or occupants.

And the defendant pretends and claims that the said Secretary of the Interior, in pursuance of the said act, made a list, which is Number 181, and which was filed September 5, 1905, and which included the land hereinbefore last described, and under and in pursuance of the said act of Congress of July 1, 1898, the said Northern Pacific Railway Company, which the defendant claims was a lawful successor of the Northern Pacific Railroad Company, became and was entitled to own and possess the said land, and the defendant claims that the said Northern Pacific Railway Company has conveyed to the defendant its said rights in the premises, and that its said right to enter upon the said land and construct its line is paramount and superior to the plaintiff's said right of way.

The defendant claims the right to go upon and occupy lot 1 of section 29, township 3 north, range 10 east of the Willamette Meridian, under and by virtue of an act of Congress of June 3, 1878, commonly called the timber and stone act; and pretends and claims that one Heinrich Kapp, by compliance with the terms of the said act became the owner of the said land long subsequent to the time of the location of the plaintiff's line as aforesaid, and that the said Heinrich Kapp by some contract or agreement has granted to the defendant the right to go upon the said land and do the acts of which this plaintiff com-

plains as aforesaid. And the defendants claim the right to go upon lots 4 and 5 of section 30 of the said township and range under and by virtue of the homestead laws of Congress and claim that the said Heinrich Kapp filed a homestead thereon on the 28th day of December, 1903, and has since deeded to the defendant the said lots.

The plaintiffs allege that the defendants claimed the right to go upon lots 1 and 2 of section 34, township 3 north, range 9 east of the Willamette Meridian, and construct its line of railway as aforesaid by virtue of the homestead laws of the act of Congress, and claimed and pretend that at the time of the location of the plaintiff's line as aforesaid one, Samuel Martin, claimed a homestead on said lots, but that said homestead was canceled March 23, 1901, and that defendant claims that under the said acts of Congress plaintiff has no right of way on the lots in said section 34.

The defendant pretends and claims the right to enter upon and hold lots 1, 2, 3 and 4 in section 3, township 3 north, of range 9 east of the Willamette Meridian under an act of Congress called the homestead act, and that Paul Paulson filed a homestead on the said lots on August 11th, 1905, and has contracted with the defendant to give it the right of way occupied by plaintiff's right of way over the said lots.

The defendants claim the right to go upon lot 2 of section 32, township 3 north, of range 9 east of the Willamette Meridian under the said timber and stone act hereinbefore referred to, of June 3, 1878, and claims that A. Fleischhauer made an application under said act for said land, dated April 22, 1903, and became entitled to the possession of the said land and has contracted with the defendants for its pretended right of way as aforesaid.

And the defendant claims the right to go upon lot 4 of section 32, township 3 north, of range 9 east of the Willamette Meridian under the homestead act of Congress, and claims that Paul Paulson, under the terms of the said act became and was entitled to the said lot 4 as a homestead, on the 11th day of August, 1905, and has conveyed to the defendant the right to go upon the plaintiff's right of way as aforesaid.

The defendant claims the right to enter upon plaintiff's right of way in lots 3 and 4 of section 35, township 3 north, of range 8 east of the Willamette Meridian, under and by virtue of the homestead act of Congress, and pretends and claims that Thomas Menice had a homestead at the time of the plaintiff's location of its said right of way, which subsequently relinquished by him, and that by virtue of said act, that plaintiffs have no right of way over the said lots.

That the defendant makes no pretense or claim controverting the plaintiffs' right and title to its said right of way, or maintaining its own right and title to the said right of way or to justify the said acts of trespass except rights that arise under the said several acts of Congress, and that in determining the respective rights of the plaintiff and the defendant in and to the said land and their priorities it will be necessary for this Court to consider, construe and apply the said acts of Congress, and the said act of Congress approved March 3, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States."

That the defendant pretends to own and claims the right to occupy the complainant's said right of way for the construction of the defendant's road, and by its agents, servants and employees, contractors and subcontractors is continually trespassing upon the said right of way as aforesaid.

That unless the defendant shall be restrained and enjoined from continuing its said trespass as aforesaid the complainant will be required to bring a multiplicity of suits against the defendant and against its several employees, servants and agents to prevent the said injury and the said wrongful acts and that the complainant's injury cannot be compensated in damages.

XIV.

And the complainant charges that the value of the said right of way over the lands herein described in township 3 north of range 10 east, and township 3 north of range 9 east, and township 3 north of range 8 east, as aforesaid, exceeds the sum of two thousand (\$2,000.00) dollars, and the amount in dispute herein exceeds the sum of two thousand (\$2,000.00) dollars exclusive of interest and costs.

XV.

That complainant has no plain, speedy or adequate remedy at law.

XVI.

To the end that the complainant may obtain the relief to which it is entitled in the said case, it now prays the Court to grant it due process by subpoena directed to the said Portland and Seattle Railway Company, defendant hereinbefore named, requiring it to appear herein and answer, but not under oath, the same being expressly waived, the several allegations in this, the complainant's amended bill contained, and that the said defendant, the Portland and Seattle Railway Company, and its servants, agents, and employees, and all others under or by its direction from entering upon any of the said land described in this amended bill in township 3 north of range 10 east, and township 3 north of range 9

east, and township 3 north of range 8 east of the Willamette Meridian, within its said right of way, and from constructing any part of its said railway thereon, and from making any excavations or doing any of the things aforesaid, which obstruct, retard or prevent the complainant from using its said right of way and from constructing and operating its said line of railway as described in this bill of complaint, and that pending this suit, a preliminary injunction shall be granted against the defendant, the Portland and Seattle Railway Company, enjoining and restraining the said defendant from doing any of the aforesaid acts, and that pending the decision upon the application for a preliminary injunction herein that the Court may grant an order restraining the said acts until the decision upon the said motion, and for such other and further relief as to the Court may seem meet in equity, and for the complainant's costs and disbursements.

MARTIN L. PIPES,

GEORGE W. STAPLETON,

Solicitors for the Complainant.

State of Oregon,

County of Multnomah,—ss.

I, L. Gerlinger, being first duly sworn, depose and say that I am the president of the complainant, in

the above-entitled suit; and that the foregoing amended bill of complaint is true as I verily believe.

L. GERLINGER.

Subscribed and sworn to before me this 23 day of March, 1906.

[Seal]

MARTIN L. PIPES,

Notary Public for the State of Oregon.

State of Washington,
County of Clarke,—ss.

Due service of the within amended bill of complaint is hereby accepted in Clarke County, Washington, this 24th day of March, 1906, by receiving a copy thereof, duly certified to as such by Martin L. Pipes, attorney for complainant.

JAMES B. KERR,

Attorney for Defendant.

[Endorsed]: Amended Bill of Complaint. Filed Mar. 28, 1906. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the Circuit Court of the United States for Western
District of Washington.*

THE COLUMBIA VALLEY RAILROAD COM-
PANY (a Corporation),

Complainant,

vs.

THE PORTLAND AND SEATTLE RAILWAY
COMPANY (a Corporation),

Defendant.

Demurrer to Amended Bill of Complaint.

Comes now the defendant above named and demurs to the amended bill of complaint of the complainant herein, and as ground for said demurrer says:

That the court above named has no jurisdiction of the matters and things set out in said amended bill of complaint and prays that said amended bill of complaint may be dismissed.

PORTLAND AND SEATTLE RAILWAY
COMPANY,

By JAMES B. KERR,

Its Solicitor.

State of Washington,
County of Clarke,—ss.

James B. Kerr, being first duly sworn, on oath says that he is an officer, to wit, the assistant secretary of the defendant corporation above named. That the foregoing demurrer is interposed in good faith and not for the purposes of delay.

JAMES B. KERR.

Subscribed and sworn to before me this 30th day of March, 1906.

A. L. MILLER,

Notary Public in and for said County and State Residing at Vancouver.

I, James B. Kerr, counsel for defendant above named, hereby certify that the foregoing demurrer is in my opinion well taken in point of law.

JAMES B. KERR.

[Endorsed]: Demurrer. Filed in the U. S. Circuit Court, Western Dist. of Washington. Apr. 2, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

*In the Circuit Court of the United States for the
Western District of Washington, for the —
Division Thereof.*

THE COLUMBIA VALLEY RAILROAD COM-
PANY (a Corporation),

Complainant,

vs.

THE PORTLAND AND SEATTLE RAILWAY
COMPANY (a Corporation),

Defendant.

Supplemental Bill in Equity.

To the Judges of the Circuit Court of the United
States for the Western District of Washington
for the ——— Division thereof.

Comes now the complainant in the above-entitled
suit, by this its supplemental bill, and respectfully
shows:

I.

That heretofore, to wit, on the 2d day of Febru-
ary, 1906, complainant filed its original bill herein
against the above-named defendant, and that due
process by subpoena addressed and directed to the
said defendants, requiring the said defendant to ap-
pear and answer was duly and regularly issued and
served, and that thereafter the defendant did ap-

pear and plead to complainant's said bill. Thereafter complainant, by leave of Court first had and obtained, filed its amended bill against the hereinbefore mentioned defendant; and thereafter, the defendant filed its pleading to the said amended bill, upon which the same is now pending in this court.

II.

That subsequent to the filing of the original and amended bill of the complainant in this court, and subsequent to the appearance of the defendant and the filing of the pleadings to the said original and amended bill by the defendant herein, and during the time of the pendency of this cause in this court, to wit, on the 10th day of July, 1906, the said defendant did file in the Superior Court of the State of Washington, in and for the County of Skamania, a suit against the complainant herein, and the Wallula Pacific Railroad Company, a corporation, as defendant, which said suit is entitled the Portland and Seattle Railway Company, a Corporation, Plaintiff, versus The Columbia Valley Railroad Company, a Corporation, and The Wallula Pacific Railroad Company, a Corporation, Defendants, a copy of which complaint so filed by the defendants herein against the complainant, and the said Wallula Pacific Railroad Company, as defendants, is hereto attached, marked Exhibit "A," and made part hereof; that process due and regular was issued, and upon the

11th day of July, 1906, was duly served upon the complainant and the Wallula Pacific Railroad Company, named therein as defendants, requiring the said defendants therein named to appear within twenty days after the service of the summons, exclusive of the day of service, and to defend the said action in the Superior Court of the State of Washington, in and for the County of Skamania, and upon failure so to do, judgment would be rendered against said defendants therein named according to the demands of the complaint, a copy of which was served upon complainant and the Wallula Pacific Railroad Company, as defendants therein.

III.

That the question involved in the said action instituted in the said Superior Court of the State of Washington in and for the County of Skamania, hereinbefore referred to, and the controversy between the parties thereto, and the question presented for adjudication is of the same subject matter involved in the case now pending in this court in this suit, and relates to the same right of way and the same parties, and particularly describes and refers to a portion of the same property, and to allow, or to permit the said action filed by the defendant against the said complainant and the said Wallula Pacific Railroad Company as defendants, in the Superior court of the State of Washington, in and for

the County of Skamania, to continue, or to further proceed, would affect, impair or defeat the jurisdiction of this Court in this suit, and would prevent, impair and embarrass the carrying into full force and effect any and all judgments, decrees, rules or orders made by this Court in this proceeding; and the defendant threatens, and will, unless restrained by this Court, proceed with the said case hereinbefore referred to and filed in the Superior Court of the State of Washington in and for the County of Skamania, thus seriously and substantially affecting, impairing and defeating the jurisdiction of this Court, and defeat the carrying into full force and effect the orders, rules, judgments and decrees made, or to be made by this Court herein.

Wherefore, to the end that the jurisdiction of this Court may be preserved and protected, that its orders, rules, judgments and decrees may have and possess full force and effect, and that the complainant may have and receive that full relief to which it is entitled, it now prays that this Court require the defendant to answer herein, but not under oath, the same being expressly waived, the several allegations in this supplemental bill contained, and that this Court issue and grant an injunction against the defendant, the Portland and Seattle Railway Company, its officers, agents and employees, enjoining and restraining the said defendant, its officers,

agents and employees from instituting in any other court of the United States, or any state court, any suit, action or proceeding which in any manner or matter affects the subject of this controversy, or any of the questions herein presented for adjudication, and that the said defendant, its officers, agents and employees be especially and particularly enjoined and restrained from further, or at all, proceeding with the case which it instituted in the Superior Court of the State of Washington, in and for the County of Skamania, against the complainant herein and the Wallula Pacific Railroad Company as defendants, herein before referred to, during the pendency of this suit, and for such relief as is prayed in complainant's amended bill, and for such other and further relief as to the Court may seem just, meet and equitable.

W. W. COTTON,
ARTHUR C. SPENCER,
COOVERT & STAPLETON,
RALPH E. MOODY,

Solicitors for Complainant.

*In the Superior Court of the State of Washington,
for the County of Skamania.*

PORTLAND AND SEATTLE RAILWAY COM-
PANY (a Corporation),

Plaintiff,

vs.

COLUMBIA VALLEY RAILROAD COMPANY
(a Corporation), and the WALLULA PA-
CIFIC RAILROAD COMPANY, (a Corpor-
ation).

Defendants.

Exhibit "A" to Supplemental Bill in Equity.

The State of Washington, to the said Defendants.

Your are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above-entitled action in the court aforesaid; and in case of your failure so to do judgment will be rendered against you, according to the demand of the complaint, copy of which is herewith served upon you.

JAMES B. KERR,

GEO. T. REID,

Attorneys for Plaintiff.

P. O. Address, Vancouver, Clarke County, Wash-
ington.

*In the Superior Court of the State of Washington,
for the County of Skamania.*

PORTLAND AND SEATTLE RAILWAY COM-
PANY (a Corporation),

Plaintiff,

vs.

COLUMBIA VALLEY RAILROAD COMPANY
(a Corporation), and the WALLULA PA-
CIFIC RAILROAD COMPANY (a Corpor-
ation),

Defendants.

To the Honorable Judge of the Above-named Court:

The above-named plaintiff for its cause of action against the defendants above-named shows to the court as follows:

I.

That the plaintiff is a railroad corporation organized and existing under the laws of the State of Washington, with power and authority to construct, maintain and operate a line of railroad from Kennewick, Washington, down the north bank of the Columbia River to Vancouver, Washington, and is now engaged in the construction of a railroad between said points, which it proposes to maintain and operate as a common carrier of freight and passengers.

II.

That the defendants Columbia Valley Railroad Company and Wallula Pacific Railroad Company are corporations organized and existing under the laws of the State of Washington.

That plaintiff has acquired as right of way for said railroad a strip of land which is practically continuous between said points above mentioned, and is now in the possession thereof and engaged in the construction of said railroad thereon.

That the plaintiff is the owner and in possession of the following described premises, to wit:

A strip of land one hundred feet in width being fifty feet in width on each side of the center line of plaintiff's railroad as the same is now staked out on the ground and constructed over and across lots one, two, three and four of section thirty-three, and lot two of section thirty-two, township three north, range nine east, Willamette Meridian; lots four and five of section thirty, of township three north, range ten east, Willamette Meridian; lot one of section thirty-three, lots one, two, three and four of section thirty-two, lots, one, two and three section thirty-one, in township three north, range twelve east, Willamette Meridian; lots one, two, and three of section fourteen of township two north, range fourteen east, Willamette meridian; lots four and five of section thirty-one, township three north, range nineteen east,

W. M.; lots one, two, three and four of section twenty-four, township three north, range 20 east, W. M.; lot four of section twelve, township four north, range 23 east, W. M.; lots one, two, three and four of section four, lot one of section six, the south half of the northeast quarter, the north half of the southeast quarter, the southwest quarter of the southeast quarter and the southwest quarter of the southwest quarter of section six, township four north, range twenty-four east, W. M.; the northeast quarter of the northeast quarter, lot one, and the southwest quarter of the northeast quarter of section twenty-eight, township five north, range twenty-five east, W. M.; the south half of the southeast quarter, the southeast quarter of the southwest quarter of section ten, the south half of section eighteen, township five north, range twenty-seven east, W. M.

Also a certain strip of land two hundred feet in width, being one hundred feet in width on each side of the center line of plaintiff's railway as the same is staked out on the ground and constructed over and across lot three of section thirty-two and lot five of section twenty-five, township three north, range nine east, W. M.; lot two of section one, township two north of range twelve east, W. M.; lot four of section thirty-five, township three north, range eleven east,

W. M.; lots one and two of section seven, township two north, range, thirteen east, W. M.; lot one of section six, township two north, range sixteen east, W. M.; lots one and two of section fifteen; lot two of section twenty-two; lots one, two and three and the southeast quarter of the southwest quarter of the section twenty-one; lots one and two of section twenty-eight; lots one, two, three and four section thirteen, township three north, range seventeen east, W. M.; lots one, two, three and four of section eighteen; lots one and two of section seventeen, township three north, range eighteen east, W. M.; lot four of section thirty-two, lots two and three of section thirty-one; lot one of section thirty-four, township three north range nineteen east, W. M.; lots three and five of section thirty, lots one, two and three and the southwest quarter of the southwest quarter of section twenty-two, township three north, range twenty east, W. M.; lots one, two and three of section two, township three north, range twenty-one east, W. M.; lots one, two, three and four of section thirty-two, township four north, range twenty-two east, W. M.; lots one, two, three and four, section thirty-two, township four north, range twenty-two east, W. M.; lots one, two and three of section fourteen, lots one, two and three of section twelve, lots four, five, six and seven of section eighteen township four north range twenty-three east, W. M.; lots one, two, three and four of

section twenty-two, lots three, four and five of section twenty-eight, township five north, range twenty-five east, W. M.; lots one, two, three and four, section ten, township five north, range twenty-nine east, W. M.; lots one and two of section twenty-three; lots one and two of section twenty-four; lots one, two and three of section twenty-six, township six north, range thirty east, W. M.

Also a strip of land one hundred and fifty feet in width, being seventy-five feet in width on each side of the center line of plaintiff's railway as the same is staked out on the ground and constructed across lot one of section twenty-four, township four north, range twenty-two east, W. M.

That all of said premises above described are part of said continuous right of way of said plaintiff between said points above-mentioned, and the same and all thereof are intended for use as part of plaintiff's said right of way in the performance of plaintiff's obligations as a common carrier of freight and passengers in the exercise of the franchise conferred upon the plaintiff by the State of Washington. That part of said premises are situated in the County of Skamania.

That the defendants claim some right, title, estate or interest in said premises, adverse to the title, estate and interest of the plaintiff and said claims of said defendants and each thereof are wrongful and without right.

Whereof, the plaintiff prays the judgment of this Court that it be adjudged to be the owner and entitled to the possession of said premises and all thereof, free from any title, estate, interest or claim of said defendants, or either thereof, and that the claims of the said defendants and each thereof may be adjudged to be wrongful and without right, and for its costs and disbursements herein.

JAMES B. KERR,
GEO. T. REID,
Attorneys for Plaintiff.

Vancouver, Washington.
State of Washington,
County of Clarke,—ss.

James B. Kerr, being first duly sworn, on oath says: That he is an officer, to wit, assistant secretary of the plaintiff above-named, makes this verification as such officer for and in its behalf and is fully authorized so to do; that he has read the foregoing complaint, knows the contents thereof and believes the same to be true.

JAMES B. KERR.

Subscribed and sworn to before me this 10th day of July, 1906.

W. S. LYONS,
Notary Public in and for said County and State,
Residing at Kelso.

State of Oregon,
County of Multnomah,—ss.

I, L. Gerlinger, being first duly sworn, depose and say: I am the president of the complainant corporation, named in the foregoing supplemental bill of complaint. I have heard the same read and know the contents thereof, and I believe the same to be true, and that he makes this affidavit and verification for and behalf of said complainant corporation, being fully and duly authorized so to do.

L. GERLINGER.

Subscribed and sworn to before me this 26th day of July, 1906.

[Seal]

R. E. MOODY,

Notary Public for Oregon, Residing at Portland,
said State.

Received copy this 28th day of July, 1906.

JAMES B. KERR,

Attorney for Defendant.

[Endorsed]: Supplemental Bill of Complaint.
Filed in the U. S. Circuit Court, Western Dist. of
Washington Aug. 1, 1906. A. Reeves Ayres, Clerk.
By H. M. Walthew, Dep.

*In the Circuit Court of the United States for the
Western District of Washington, for the ——
Division Thereof.*

THE COLUMBIA VALLEY RAILROAD COM-
PANY (a Corporation),

Complainant,

vs.

THE PORTLAND AND SEATTLE RAILWAY
COMPANY (a Corporation),

Defendant.

Motion for Preliminary Injunction.

Comes now the complainant in the above-entitled cause and moves the Court to grant and issue a preliminary injunction against the defendant herein, as prayed for in the supplemental bill of complaint herein; this motion is based upon the supplemental bill of complaint and the affidavit of L. Gerlinger.

W. W. COTTON,

ARTHUR C. SPENCER,

COOVER & STAPLETON,

RALPH E. MOODY,

Solicitors for Complainant,

Service by copy admitted this 28th day of July,
1906.

JAMES B. KERR,

Attorney for Defendant.

[Endorsed]: Motion for Preliminary Injunction. Filed in the U. S. Circuit Court, Western Dist. of Washington, Aug. 1, 1906. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

In the Circuit Court of the United States for the Western District of Washington, for the ——— Division Thereof.

THE COLUMBIA VALLEY RAILROAD COMPANY (a Corporation),

Complainant,

vs.

THE PORTLAND AND SEATTLE RAILWAY COMPANY (a Corporation),

Defendant.

Affidavit for Preliminary Injunction.

I, L. Gerlinger, being first duly sworn, depose and say, that at the time hereinafter mentioned I was, and ever since have been and now am the duly elected, qualified and acting president of the above-named complainant, The Columbia Valley Railroad Company, and that I make this affidavit upon behalf of the said complainant, in the above-entitled cause, for the purpose of obtaining a restraining order and an injunction in the said cause against the above-named defendant, The Portland and Seattle Railway Company, also a corporation, as prayed for in

the amended bill of complaint and the supplemental bill of complaint of the complainant filed herein; that the said complainant ever since the 16th day of February, 1899, has been, and is now a corporation, duly organized and existing under the laws of the State of Washington for the purpose of building, equipping, operating and acquiring a railroad and telegraph line from Wallula, on the south bank of the Columbia River, in the State of Washington, thence across the Columbia River at a point at or near Wallula, and thence by some eligible route along the north bank of the Columbia River to a point in the State of Washington on the Columbia River at or near the mouth of the said river, and to maintain, operate, lease, contract or acquire the said railroad or telegraph line or lines, to carry freight or passengers thereon and transmit messages thereover, and to receive tolls for the carriage and transmission of the same and to do all things necessary or proper for the accomplishment of the above, as specified in its Articles of Incorporation.

That heretofore, to wit, on the 2d day of February, 1906, complainant filed its original bill herein against the above-named defendant, and that due process by subpoena addressed and directed to the said defendants, requiring the said defendants to appear and answer, was duly and regularly issued and served, and that thereafter the defendant did appear

and plead to complainant's said bill. Thereafter, complainant, by leave of Court first had and obtained, filed its amended bill against the hereinbefore mentioned defendant; and, thereafter, the defendant filed its pleading to the said amended bill, upon which the same is now pending in this court.

II.

That subsequent to the filing of the original and amended bill of complainant in this court, and subsequent to the appearance of the defendant and the filing of the pleadings to the said original and amended bill by the defendant herein, and during the time of the pendency of this cause in this court, to wit, on the 10th day of July, 1906, the said defendant did file in the Superior Court of the State of Washington in and for the County of Skamania, a suit against the complainant herein, and the Wallula Pacific Railroad Company, a corporation, as defendant, which said suit is entitled the Portland and Seattle Railway Company, a Corporation, Plaintiff, versus the Columbia Valley Railroad Company, a Corporation, and the Wallula Pacific Railroad Company, a Corporation, Defendants, a copy of which complaint so filed by the defendants herein against the complainant, and the said Wallula Pacific Railroad Company, as Defendants, is hereto attached, marked Exhibit "A," and made part hereof; that process due and regular was issued and upon the 11th day

of July, 1906, was duly served upon the complainant and the Wallula Pacific Railroad Company, named therein as the defendants, requiring the said defendants therein named to appear within twenty days after the service of the summons, exclusive of the day of service, and to defend the said action in the said Superior Court of the State of Washington, in and for the County of Skamania, and upon failure so to do, judgment would be rendered against said defendants therein named, according to the demands of the complaint, a copy of which was served upon complainant and The Wallula Pacific Railroad Company, as defendants therein.

III.

That the question involved in the said action instituted in the said Superior Court of the State of Washington in and for the County of Skamania, herein before referred to, and the controversy between the parties thereto, and the question presented for adjudication is of the same subject matter involved in the case now pending in this court in this suit, and relates to the same right of way and the same parties, and particularly describes and refers to a portion of the same property, and to allow, or to permit the said action filed by the defendant against the said complainant and the said Wallula Pacific Railroad Company, as defendants, in the

Superior Court of the State of Washington, in and for the County of Skamania, to continue or to further proceed, would affect, impair, or defeat the jurisdiction of this Court in this suit, and would prevent, impair and embarrass the carrying into full force and effect any and all judgments, decrees, rules or orders made by this Court in this proceeding; and the defendant threatens, and will unless restrained by this Court, proceed with the said case herein before referred to, and filed in the Superior Court of the State of Washington, in and for the County of Skamania thus seriously and substantially affecting, impairing, and defeating the jurisdiction of this Court, and defeat the carrying into full force and effect the orders, rules, judgments and decreed made, or to be made by this Court herein.

L. GERLINGER.

Subscribed and sworn to before me this 26 day of July, 1906.

[Seal]

R. E. MOODY,
Notary Public for Oregon, Residing at Portland,
said State.

*In the Superior Court of the State of Washington,
for the County of Skamania.*

PORTLAND AND SEATTLE RAILWAY COM-
PANY (a Corporation),

Plaintiff,

vs.

COLUMBIA VALLEY RAILROAD COMPANY
(a Corporation), and THE WALLULA PA-
CIFIC RAILROAD COMPANY (a Corpora-
tion),

Defendants.

Exhibit "A" to Affidavit for Injunction.

The State of Washington to the said Defendants:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above-entitled action in the court aforesaid; and in case of your failure so to do judgment will be rendered against you, according to the demands of the complaint, copy of which is herewith served upon you.

JAMES B. KERR,

GEO. T. REID,

Attorneys for Plaintiff.

P. O. Address, Vancouver, Clarke County, Wash-
ington.

*In the Superior Court of the State of Washington,
for the County of Skamania.*

PORTLAND AND SEATTLE RAILWAY COM-
PANY (a Corporation),

Plaintiff,

vs.

COLUMBIA³¹ VALLEY RAILROAD COMPANY
(a Corporation), and THE WALLULA PA-
CIFIC RAILROAD COMPANY (a Corpora-
tion),

Defendants.

To the Honorable Judge of the Above-named Court:

The above-named plaintiff for its cause of action against the defendants above named shows to the Court as follows:

I.

That the plaintiff is a railroad corporation organized and existing under the laws of the State of Washington, with power and authority to construct, maintain and operate a line of railroad from Kennewick, Washington, down the north bank of the Columbia River to Vancouver, Washington, and is now engaged in the construction of a railroad between said points, which it proposes to maintain and operate as a common carrier of freight and passengers.

II.

That the defendants Columbia Valley Railroad Company and Wallula Pacific Railroad Company are corporations organized and existing under the laws of the State of Washington.

That plaintiff has acquired as right of way for said railroad a strip of land which is practically continuous between said points above mentioned, and is now in the possession thereof and engaged in the construction of said railroad thereon.

That the plaintiff is the owner and in possession of the following described premises, to wit:

A strip of land one hundred feet in width being fifty feet in width on each side of the center line of plaintiff's railroad as the same is now staked out on the ground and constructed over and across lots one, two, three and four of section thirty-three, and lot two of section thirty-two, township three north, range nine east, Willamette Meridian; lots four and five of section thirty, of township three north, range ten east, Willamette Meridian; lot one of section thirty-three; lots one, two, three and four of section thirty-two; lots one, two and three, section thirty-one, in township three north, range twelve east, Willamette meridian; lots one, two and three of section fourteen of township two north, range fourteen east, Willamette Meridian; lots four and five of section thirty-one, township three north, range nineteen east, W. M.; lots one, two, three and four of sec-

tion twenty-four, township three north, range twenty east, W. M.; lot four of section twelve, township four north, range 23 E., W. M.; lots one, two, three and four of section four, lot one of section six, the south half of the northeast quarter, the north half of the southeast quarter, the southwest quarter of the southeast quarter, and the southwest quarter of the southwest quarter of section six, township four north, range twenty-four east, W. M.; the northeast quarter of the northeast quarter lot one, and the southwest quarter of the northeast quarter of section twenty-eight, township five north, range twenty-five east, W. M.; the south half of the southeast quarter, the southeast quarter of the southwest quarter of section ten, the south half of section eighteen, township five north, range twenty-seven east, W. M.

Also a certain strip of land two hundred feet in width being one hundred feet in width on each side of the center line of plaintiff's railway as the same is staked out on the ground and constructed over and across lot three of section thirty two and lot five of section twenty-five, township three north, range nine east, W. M.; lot two of section one, township two north of range twelve east, W. M.; lot four of section thirty-five, township three north, range eleven east, W. M.; lots one and two of section seven, township two north, range thirteen east, W. M.; lot one of section six, township two north, range sixteen

east, W. M.; lots one and two of section fifteen; lot two of section twenty-two; lots one, two and three and the southeast quarter of the southwest quarter of the section twenty-one; lots one and two of section twenty-eight; lots one, two, three and four, section thirteen, township three north, range seventeen east, W. M.; lots one, two, three and four of section eighteen; lots one and two of section seventeen, township three north, range eighteen east, W. M.; lot four of section thirty-two; lots two and three of section thirty-one; lot one of section thirty-four, township three north, range nineteen east, W. M.; lots three and five of section thirty; lots one, two and three and the southwest quarter of the southwest quarter of section twenty-two, township three north, range twenty east, W. M.; lots one, two and three of section two, township three north, range twenty-one east, W. M.; lots one, two, three and four of section thirty-two, township four north, range twenty-two east, W. M.; lots one, two, three and four, section thirty-two, township four north, range twenty-two east, W. M.; lots one, two and three of section fourteen; lots one, two and three of section twelve; lots four, five, six and seven of section eighteen, township four north, range twenty-three east, W. M.; lots one, two, three and four of section twenty-two; lots three, four and five of section twenty-eight, township five north, range twenty-five east, W. M.; lots one,

two, three and four, section ten, township five north, range twenty-nine east, W. M.; lots one and two of section twenty-three; lots one and two of section twenty-four; lots one, two and three of section twenty-six, township six north, range thirty east, W. M.

Also a strip of land one hundred and fifty feet in width, being seventy-five feet in width on each side of the center line of plaintiff's railway, as the same is staked out on the ground and constructed across lot one of section twenty-four, township four north, range twenty-two east, W. M.

That all of said premises above described are part of said continuous right of way of said plaintiff between said points above mentioned, and the same and all thereof are intended for use as part of plaintiff's said right of way and the performance of plaintiff's obligations as a common carrier of freight and passengers in the exercise of the franchise conferred upon the plaintiff by the State of Washington. That part of said premises are situated in the county of Skamania.

That the defendants claim some right, title, estate or interest in said premises, adverse to the title, estate and interest of the plaintiff and said claims of said defendants and each thereof are wrongful and without right.

Wherefore, the plaintiff prays the judgment of this Court that it be adjudged to be the owner and

entitled to the possession of said premises and all thereof, free from any title, estate, interest or claim of said defendants, or either thereof, and that the claim of the said defendants and each thereof may be adjudged to be wrongful and without right, and for its costs and disbursements herein.

JAMES B. KERR,
GEO. T. REID,
Attorneys for Plaintiff,
Vancouver, Washington.

State of Washington,
County of Clarke,—ss.

James B. Kerr, being first duly sworn, on oath says: That he is an officer, to wit, assistant secretary of the plaintiff above named, makes this verification as such officer for and in its behalf, and is duly authorized so to do; that he has read the foregoing complaint, knows the contents thereof and believes the same to be true.

JAMES B. KERR.

Subscribed and sworn to before me this 10th day of July, 1906.

W. S. LYSONS,
Notary Public in and for said County and State, Residing at Kelso.

(Copy.)

Service by copy admitted this 28 day of July, 1906.

JAMES B. KERR,
Attorney for Defendant.

[Endorsed]: Affidavit for Injunction. Filed in the U. S. Circuit Court, Western Dist. of Washington. Aug. 1, 1906. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

*In the Circuit Court of the United States for the
Western District of Washington, for the ———
Division Thereof.*

THE COLUMBIA VALLEY RAILROAD COM-
PANY (a Corporation),

Complainant,

vs.

THE PORTLAND AND SEATTLE RAILROAD
COMPANY (a Corporation),

Defendant.

Notice of Motion for Preliminary Injunction, etc.

To the Portland and Seattle Railway Company, the
Above-named Defendants:

Please take notice that on the 21st day of August, 1906, at 10 o'clock, A. M., or as soon thereafter as counsel can be heard, the complainant will move for leave to file the supplemental bill of complaint herewith, a copy of which is herewith served upon you as a supplemental bill of complaint in said cause, and will move at the same time for a preliminary injunction as prayed for in the said supplemental bill of complaint herein, and the affidavit of L. Gertlinger,

president of the complainant, a true copy of which affidavit is herewith served upon you.

W. W. COTTON,
ARTHUR C. SPENCER,
COOVERT & STAPLETON,
RALPH E. MOODY,
Solicitors for Complainant.

Service by copy admitted this 28th day of July,
1906.

JAMES B. KERR,
Attorney for Defendant.

[Endorsed]: Notice of Motion for Injunction.
Filed in the U. S. Circuit Court, Western Dist. of
Washington. Aug. 1, 1906. A. Reeves Ayres,
Clerk. H. M. Walthew, Dep.

*In Circuit Court of the United States for the West-
ern District of Washington, Western Division.*

COLUMBIA VALLEY RAILROAD COMPANY
(a Corporation),

Complainant,

vs.

PORTLAND AND SEATTLE RAILWAY COM-
PANY (a Corporation),

Defendant.

Demurrer to Supplemental Bill of Complaint.

Comes now the defendant above named and demurs to the supplemental bill of complaint of complainant herein, and as grounds of demurrer specifies,

First: That this Court has no jurisdiction of the above-entitled cause.

Second: That said supplemental bill of complaint does not state facts which entitle the complainant to relief.

JAMES B. KERR,
Solicitor for Defendant.

Western District of Washington,
County of King,—ss.

James B. Kerr, being first duly sworn, on oath says: That he an officer, to wit, the assistant secretary of the Portland and Seattle Railway Company, makes this affidavit for and on its behalf; that the above demurrer is not interposed for the purpose of delay.

JAMES B. KERR.

Subscribed and sworn to before me, this 7th day of August, 1906.

A. N. MOORE,
Deputy Clerk, U. S. Circuit Court, Western District
of Washington.

I, James B. Kerr, solicitor for defendant above named, hereby certify that the foregoing demurrer is, in my opinion, in point of law well taken.

JAMES B. KERR,

Solicitor for Defendant.

[Endorsed]: Demurrer to Supp. Bill of Complaint. Filed in the U. S. Circuit Court, Western Dist. of Washington, Aug. 7, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

*United States Circuit Court, Western District of
Washington, Northern Division.*

No. 1384.

COLUMBIA VALLEY RAILROAD CO.,

Complainant,

vs.

PORTLAND & SEATTLE RAILWAY CO.,

Defendant.

Memorandum Decision on Application for Injunction, and on Demurrer to Amended Bill of Complaint.

(Filed Sept. 5, 1906.)

This cause has been argued and submitted upon the complainant's application for a preliminary injunction, and upon a demurrer to the amended bill of complaint which alleges as the sole ground of de-

murrer that this Court has not jurisdiction of the subject matter of the suit.

The parties are both corporations of the State of Washington, both proposing to build a railroad on the north side of the Columbia River, and the complainant claims title to a right of way crossing public land of the United States, acquired by compliance with the act of Congress granting to railroads the right of way through public lands, approved March 3, 1875, 18 U. S. Stats. 482, 2 U. S. Compiled Stats. 1901, p. 1568. The fourth section of the act provides that, in case of nonuser for a period of five years the right of way granted shall be forfeited, and the bill shows affirmatively that the complainant has not commenced the construction of its proposed railroad, and that the proceedings by which it claims to have acquired the right of way were completed more than five years before the date of the commencement of this suit. The bill also avers that the defendant has wrongfully entered upon said right of way, and with teams and laborers is actively engaged in constructing the bed for a railroad; that the defendant disputes the complainant's claim of title, and asserts an adverse and superior claim to the same right of way, and by specific averments shows that there is a controversy, the adjudication of which, necessarily, requires an interpretation of the act of Congress above cited, and especially the five year lim-

itation clause, and refers to other United States statutes which may effect the decision of the case.

I am convinced that the amended bill sets forth a controversy involving questions of federal law, and that this Court would have jurisdiction of the case if grounds for equitable relief existed.

Viewed in the light most favorable to complainant, the prayer of the bill is unrighteous, that is to say, it is contrary to natural justice for the complainant to hold all of the right of way two hundred feet wide, which it has not earned, and be permitted to obstruct another railroad company having the ability and will to render the public service which is the consideration for the grant. Manifestly, the purpose of the grant was to facilitate the building of railroads, and the provisions of the third section of the act plainly show a legislative intention to guard against the possibility of the grant being perverted, so as to create a monopoly.

There is a different reason, however, for holding that the suit is not cognizable in a United States Circuit Court, viz.:

- a. The suit is in equity.
- b. The principles of equity, and sec. 723, U. S. R. S., positively prohibit the maintenance of suits in equity where a plain, adequate and complete remedy may be had at law.

c. The object of the suit is to protect a dry, legal title to real estate by a party out of possession, which title is disputed, and an adverse claim of title is asserted by the defendant in possession, so that the complainant has a plain, adequate and complete remedy at law in the form of an action to recover possession, which is maintainable at law, and the recognized appropriate form of proceeding to obtain an adjudication of a controversy with respect to the legal title to real estate.

The complainant is not in court asking protection in the actual prosecution of the building of a railroad upon a right of way of which it has taken actual possession. On the contrary, it appears affirmatively by the complainant's pleadings that construction has not been commenced, and that the defendant is in possession of the right of way. These facts differentiate the case from *Alling vs. Railway Company*, 99 U. S. 463.

Only a dry, legal title is claimed, and that title is disputed by the defendant, it claiming the same property by a title adverse to the complainant, and there is another suit pending, brought by defendant, to secure an adjudication of the adverse claims of the respective parties, and it is not pretended that irremediable mischief, going to the destruction of the substance of the estate, is being done. Hence, there is no ground for an injunction, which is the

principal relief prayed for. *Erhardt vs. Boaro*, 113 U. S. 537.

The defendant being in possession, if the complainant has the legal title, as it claims, an action of ejectment, in which the parties would have a right to a trial, is the proper form of procedure, and affords an adequate and complete remedy.

Whitehead vs. Shattuck, 138 U. S. 146;

M. K. & T. Ry. Co. vs. Roberts, 152 U. S. 114;

New Mexico vs. U. S. Trust Co., 172 U. S. 171.

I can conceive of a case in which an injunction might be properly issued to restrain a competitor from vexatiously interfering in proceedings to acquire a right of way for a projected railroad, and I concede that controversies involving only equitable or inchoate rights of rival companies, with respect to right of way franchises, may be cognizable in equity. An instance which I have in mind is the case of *Sioux City & D. M. Ry. Co. vs. Chicago M. & St. P. Ry. Co.*, 27 Fed. Rep. 770. In the statement of that case Judge Shiras said:

“There is but one controversy in the cause, and that is, which company has the prior, and therefore better, right to the occupancy of the premises in dispute, for the purposes of constructing and operating its line of railway?”

And I agree fully with that part of the opinion of the learned judge, in which he said:

“It is certainly equitable that a company, which in good faith surveys and locates a line of railroad, and pays the expense thereof, should have a prior claim for the right of way for at least a reasonable length of time. The company does not perfect its right to the use of the land, as against the owner thereof, until it has paid the damages, but, as against a railroad company, it may have a prior right and better equity.”

When only equitable rights constitute the subject of a lawsuit, the parties have recourse only to a court of equity, and courts of equity are established for the express purpose of adjudicating such rights. The case last cited has a resemblance to the case at bar, in this, that the matter in dispute was the right of way for a projected line of railway, but the two cases are in contrast, because in this case the complainant has invoked the jurisdiction of a court of equity, as I have before stated, to protect a dry, legal title to real estate, when it was unnecessary to appeal to a court of equity, there being no obstacle in the way of obtaining adequate relief, and substantially the same relief, by an action in a court of law. In deciding the question submitted, the Court cannot assume that there are equitable rights to be adjusted, but is bound in rendering a decision to treat the averments of the bill of complaint, with respect to the complainant's title and the defendant's possession, as true.

The amended bill suggests that it is necessary to sue in equity to avoid a multiplicity of suits, but the facts pleaded do not support that conclusion. The agents and servants of the defendant engaged in constructing its railroad would not be necessary parties to an action at law to recover possession, by reason of privity, a judgment against the defendant would be as conclusive upon them as a decree in this case in which they are not parties. 2 Ballinger's Code, section 5518. All of the right of way situated within this judicial district is a unit, and there need be but one action to secure a complete adjudication of the whole controversy between the parties to this case. If detached sections of the right of way should be deemed subjects of separate causes of action, cognizable in different counties, still only one action would be necessary, because the Code of Civil Procedure of this state provides that an action may be prosecuted in the county in which the subject, or some part thereof, is situated, and that several distinct causes of action may be joined in one complaint. 2 Ballinger's Code, sections 4852-4942; *Stevens vs. Ferry*, 48 Fed. Rep. 7.

The complainant's application for an injunction is denied; and the demurrer to the amended bill of complaint is sustained.

C. H. HANFORD,

Judge.

[Endorsed]: Mem. Decn. On Application for Injunction, and on Demurrer to Amended Bill. Filed in the U. S. Circuit Court, Western Dist. of Washington. Sept. 5, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

THE COLUMBIA VALLEY RAILROAD CO.,
Complainant,

vs.

THE PORTLAND AND SEATTLE RAILROAD
COMPANY,

Defendant.

**Order Extending Time to Serve and File Amended
Complaint.**

On application of the complainant, The Columbia Valley Railroad Co., by its attorney, W. W. Cotton, it is considered ordered and adjudged that the said complainant, The Columbia Valley Railroad Company, have ten days time from and after this date within which to serve and file an amended complaint in the above-entitled cause.

Dated September 8th, 1906.

C. H. HANFORD,

Judge.

[Endorsed]: Order Granting Leave to File and Amended Bill of Complaint. Filed in the U. S. Circuit Court, Western Dist. of Washington, Sept. 8, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

*In the Circuit Court of the United States for the
Western District of Washington.*

IN EQUITY.

COLUMBIA VALLEY RAILROAD COMPANY
(a Corporation),

Complainant,

vs.

THE PORTLAND AND SEATTLE RAILWAY
COMPANY (a Corporation),

Defendant.

Second Amended Bill of Complaint.

To the Honorable, the Judges of the Circuit Court of the United States for the Western District of Washington:

The Columbia Valley Railroad Company, a railroad corporation duly organized and existing under and by virtue of the laws of the State of Washington and having their principal office and place of business in that State, by leave of Court first had and obtained, brings this their second amended bill of complaint against the Portland and Seattle Railway

Company, a railroad corporation, duly organized and existing under and by virtue of the laws of the State of Washington, and having their principal office and place of business in said State, and there-upon your orator complains and says:

I.

That your orator, The Columbia Valley Railroad Company now is and ever since the 16th day of February, 1899, has been a corporation, duly organized and existing under and by virtue of the laws of the State of Washington, for the purpose of building, equipping, operating and acquiring a railroad and telegraph line from Wallula, on the south bank of the Columbia River in the State of Washington; thence across the Columbia River at a point at or near Wallula, and thence by some eligible route along the north bank of the Columbia River to a point in the State of Washington, on the Columbia River, at or near the mouth of the said river, and to maintain, operate, lease, contract or acquire the said railroad or telegraph line or lines, to carry freight or passengers thereon, and to transmit messages there-over and to receive tolls for the carriage and transmission of the said, and to do all things necessary or proper for the accomplishment of the objects as specified in its Articles of Incorporation.

II.

And your orator further shows that the defendant,

The Portland and Seattle Railway Company, is a corporation, organized under and by virtue of the laws of the State of Washington, for the purpose of constructing and operating a railroad.

III.

And your orator further shows that your orator claims the right of way hereinafter described over the public lands of the United States hereinafter described under and by virtue of the provisions of the act of Congress approved March 3, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States." That the said act of Congress, among other things, provides that the right of way through the public lands of the United States is thereby granted to any railroad company duly organized under the laws of any State or territory except the District of Columbia, or by the Congress of the United States which shall have filed with Secretary of the Interior a copy of its Articles of Incorporation and due proofs of its organization under the same to the extent of 100 feet on each side of the central line of the said road; also the right to take, from the public lands adjacent to the line of the said road, material, earth, stone and timber necessary for the construction of the said railroad, also ground adjacent to such right of way for station buildings, depots, machine-shops, side-tracks, turnouts and water stations not to exceed in

amount twenty acres for each station, to the extent of one station for each ten miles of its road.

The said act of Congress further provides that any railroad company desiring to secure the benefits of the said act shall, within twelve months after the location of any section of twenty miles of its road, if the same be upon surveyed land, within twelve months after the survey thereof by the United States, file with the Register of the land office for the District where said land is located a profile map of its road, and upon approval thereof by the Secretary of the Interior, the same shall be noted upon the plats in said office, and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way; provided, that if any sections of such road shall not be completed within five years after the location of such section, the rights granted by such act shall be forfeited as to any such uncompleted section of said road.

It is further provided in said act of Congress that the act shall not apply to any lands within the limits of any military park, or Indian Reservation, or other lands specially reserved from sale, unless such right of way shall be provided for by treaty stipulation, or by act of Congress heretofore passed.

That at all the times hereinafter mentioned the said act of Congress was and is in full force and

effect and unrepealed, and reference is hereby made to the said act of Congress at 18b Statute, page 482.

IV.

And your orator further shows that in order to carry out the provisions of the said act of Congress, the Honorable Secretary of the Interior, from time to time made regulations concerning the procedure to be followed by any railroad company in obtaining a right of way as provided in said act over the public lands of the United States, and on the 4th day of November, 1899, and by a circular of August 7th, 1899, adopted and promulgated such regulations, which were to be followed thereafter, and which provided among other things that any railroad desiring to obtain the benefits of the said act should file through the office of the Commissioner of the General Land Office, or the Register of the land district in which the principal terminus of the road is to be located to be forwarded to the Secretary of the Interior.

First: A copy of its Articles of Incorporation duly certified to by the proper officer of the company under its corporate seal or by the Secretary of the State or territory where organized.

Second: A copy of the State and territorial laws under which the company was organized, with the certificate of the Governor or Secretary of the State or territory that the same is the existing law.

Third: When the said law directs that the Articles of Association or other papers connected with the organization be filed with any State or territorial officer, the certificate of such officer that the same have been filed according to law with the date of the filing thereof.

The fourth rule relates to the acts of a company operating in another State or territory than that in which it is incorporated, and is not deemed pertinent to this suit.

Fifth: The official statement under the seal of the proper officer that the organization has been completed; that the company is fully authorized to proceed with the construction of the road according to the existing law of the State or territory in which it is incorporated.

Sixth: An affidavit by the president under the seal of the company, showing the names and designations of its officers at the date of the filing of the proof.

Seventh: If certified copies of the existing laws regarding such corporations, and of new laws as passed from time to time be forwarded to the office of the Secretary of the Interior, by the Governor or Secretary of any State or Territory, a company organized in such State or Territory may file, in lieu of the requirements of the second subdivision of this paragraph, a certificate of the Governor or Secretary

of the State or Territory that no change has been made since a given date, not later than that of the laws last forwarded.

It is further provided in the said regulations that if the lands which the said railroad is to traverse are located in more than one district, duplicate maps and field-notes need be filed in but one district, and single sets in the other.

It is further provided in said regulations that the said maps must be drawn on tracing linen in duplicate and must be strictly conformable to the field-notes of the survey of the line of route or of the station grounds, and that the field-notes of the survey shall be written along the line on the map, or if the map would thereby be too much crowded to be easily read, then duplicate field-notes shall be filed separate from the map, in such form that they may be folded for filing, and that a sufficient number of stations shall be shown on the map to make it convenient to follow the field-notes, and that the map shall show the lines of reference of initial and terminal points, with their courses and distances, and that public surveys represented on the map should have their entire boundaries drawn, and on all lands affected by the right of way. The smallest legal subdivision (40-acre tracts and lots) must be shown, and that the terminal of the line of road should be fixed by reference by course and distance to the near-

est existing corner of the public survey, and that the map, field-notes, engineer's affidavit and president's certificate, as provided in said regulations shall each show these connections, and that the company must certify that the road is to be operated as a common carrier of passengers and freight.

And that when the line of survey crosses a township or section line of the public survey, the distance to the nearest existing corner shall be ascertained and noted, which the map and field-notes shall show at the points of intersection.

It is further provided that the engineer's affidavit and president's certificate required as aforesaid must be written on the map, and must both designate by termini and length in miles and decimals the line and route for which right of way application is made.

That appropriate forms are provided by the said regulations, to be followed. Reference is hereby made to the said regulations.

V.

And your orator further shows, that in pursuance of the said objects of its incorporation and for the purpose of obtaining a right of way over the public lands of the United States wherever its said railroad shall traverse the same, and in accordance with the terms of the said Act of Congress, and the said regulations adopted in pursuance thereof, your ora-

tor on the 7th day of April, 1899, duly filed with the Honorable Secretary of the Interior at Washington, in the District of Columbia, a copy of its Articles of Incorporation, and due proofs of its organization under the same, duly certified to by the president of your orator, under its corporate seal, together with a duly certified copy of the laws of the State of Washington, under which your orator was organized as a corporation in all respects as required by the said law and the said regulations, and the proper certificates of the officers in the said State of Washington as required by the said regulations, that the said articles had been filed with the said officer according to law, with the date of filing thereof, and that the organization of your orator as a corporation had been completed, and that your orator was fully authorized to proceed with the construction of its said road according to the existing laws of the said State, and the affidavit by the said L. Gerlinger, who was then and there the president of the said corporation, showing the names and designations of its officers at the date of filing the said proofs, and in all respects conforming to the requirements of the said act of Congress and of the said regulation.

VI.

And your orator further shows, that thereupon and by virtue of the said act of Congress and of the said regulations, and of the compliance therewith by

your orator as aforesaid, your orator, The Columbia Valley Railroad Company, on the 27th day of December, 1899, became entitled to acquire a right of way over, through and across the public lands of the United States designated in said act along its said route or railroad, to consist of a strip of land to the extent of 100 feet in width on each side of the central line of its said railroad, through all public lands along said route as granted by said Act of Congress, and to survey, locate, construct, operate and maintain its said railway across said lands over said right of way as aforesaid, and particularly through and over the public lands hereinafter more particularly described, lying along the route of the said railroad.

VII.

And your orator further shows, that for the purpose of fixing, designating and locating its said right of way granted as aforesaid, your orator caused the central line of its said railroad to be definitely surveyed and located on the ground beginning at a point at Station 4438-38 which is a point in the State of Washington, County of Yakima, directly opposite Wallula in the northwest quarter of section 21, township 7, north of range 31 east, W. M., and is south 72 degrees 27 minutes west 5320 feet from the corner to sections 15, 16, 21 and 22 in the township and range aforesaid, and thence to station 3379-93, which is a point south 23 degrees, 35 minutes west 2880 feet

from the northeast corner of section 1, township 5 north of range 28 east, W. M., a length of twenty miles, and continuing, beginning at Station 3379-93, which is a point south 23 degrees 35 minutes west 2880 feet from the northeast corner of section 1, township 5 north of range 28 east, W. M., thence to Station 2522-98, which is a point south 16 degrees 10 minutes west 1955 feet from the quarter section corner to sections 13 and 14, township 5 north of range 25 east, W. M., a length of twenty miles.

That your orator began the survey and location on the ground of the said route of its railroad as aforesaid on the 22d day of April, 1899, and finished the survey and location of the first twenty miles thereof as aforesaid on the 6th day of May, 1899, and began the survey and location of the second twenty miles as aforesaid on the 6th day of May, 1899, and finished the same on the 15th day of May, 1899, and began the survey of the third section of the twenty miles on the 15th day of May, 1899, and finished the same on the 24th day of May, 1899, and began the survey of the fourth section of twenty miles thereof on the 24th day of May, 1899, and finished the same on the 6th day of June, 1899, and began the survey of the fifth section of twenty miles thereof on the 6th day of June, 1899, and finished the same on the 18th day of June, 1899, and began the survey of the sixth section of twenty miles thereof on the 18th day of June,

1899, and began the survey of the seventh section of twenty miles thereof on the 20th day of April, 1899, and finished the same on the 29th day of June, 1899, and began the survey of the eighth section on April 20th, 1899, and finished the same on June 27th, 1899.

That the said central line of the route of the said railroad as so surveyed was at the time of making such surveys marked upon the ground by stakes such as are usually employed by surveyors of railroad lines, driven in the ground at the end of each 100 feet of the said line commencing at the said beginning point described as aforesaid and extending thence along said surveyed route to the ending point of the first twenty miles, and from thence along said surveyed route to the end of the said seventh section thereof as aforesaid. Each of the said stakes represented a station of 100 feet, and each of the said stakes was marked and numbered in the manner usual with surveyors of railroad lines, and the said central line of the route of the said railroad as so surveyed and marked upon the ground in the usual and customary way of surveyors, surveying and locating the line of route of railroads, and the same at all times was then and has since been readily to be observed and traced upon the ground.

VIII.

And your orator further shows that immediately after each of the said sections of twenty miles of the

survey were made as aforesaid, your orator caused correct maps or profiles thereof respectively to be made, and thereupon, J. W. Coovert, who was then and there duly authorized and appointed chief engineer of your orator, duly made his affidavit, which was then and there duly sworn and subscribed to before a notary public authorized to administer said oath, and which affidavit was written upon each of the said maps or profiles, and each of which affidavits designated by termini and length in miles and decimals, the line of railway described and surveyed as aforesaid, and appearing upon the said map was made by him as chief engineer of your orator, herein, and under its authority, and gave the date of the beginning and of the completion of the said survey of the section of twenty miles shown by the said map, and that the survey of the said line was accurately represented on each of the said maps and by the field-notes accompanying each of them, and the said affidavit which was written upon the map showing the eighth section of twenty miles of the said railroad described the beginning point of the said section as follows:

Beginning at Station 931-47, which is a point 1226 feet south and 1955 feet west from the quarter section corner to sections 34 and 35, township 3 north of range 11, east, W. M., to station 1987-38, which is a point 912 feet east and 1086 feet south of the quarter

section to sections 27 and 28, township 3 north of range 8 east, W. M., a length of twenty miles, and that the said survey was commenced on the 20th day of April, 1899, and ended on the 27th day of June, 1899, and that the survey of the said line is accurately represented on the said map and by the accompanying field-notes thereto.

That L. Gerlinger, who was then the president of your orator, duly made a certificate for each of the aforesaid maps, wherein he certified that he was the president of your orator; that the said J. W. Coov-ert, who subscribed the affidavit accompanying each of the said maps, was the chief engineer of your orator; that the survey of the said railroad as accurately represented on each of the said maps and by the field-notes thereof, was made under the authority of your orator; that your orator was duly authorized by its articles of incorporation to construct the said railroad upon the location shown upon the said maps; that the survey as represented on each of the said maps and field-notes thereof was adopted by resolution of its Board of Directors on a certain day in said certificate stated, as the definite location of the said railroad, and which survey as to each map described the beginning and terminal points shown; and that each of the said maps had been prepared to be filed in order to obtain the benefits of the act of Congress approved March 3, 1875, entitled "An act

granting to the railroads the right of way through the public lands of the United States," and each of which said certificates further certify that the said railroad was to be operated as a common carrier of passengers, and each of which certificates was officially duly signed by said L. Gerlinger, as president of your orator, and attested by George W. Stapleton, who was then and there the duly appointed and acting Secretary of your orator, and which certificates respectively, were written upon each of the said maps respectively, and the said certificates written upon the eighth section thereof as aforesaid designated the 27th day of December, 1899, as the date when the said survey was adopted by the said Board of Directors as aforesaid.

That the said maps as aforesaid were made in all respects conformably to the regulations of the Secretary of the Interior hereinbefore described and referred to, and conformably to the field-notes of the survey of the line of the said route for the whole distance of the said 160 miles.

That the said J. W. Covert, as chief engineer, in making the said surveys, made accurate field-notes thereof so complete that the said line may be retraced from them on the ground to conform to the said regulations in every respect.

That the said maps and field-notes were each duly filed with the Board of Trustees of your orator and

duly approved by the said Board of Trustees, and the said line of the said railroad as so designated and surveyed was duly adopted as the located line of your orator for the purpose among other things of obtaining the benefits of the said act of Congress of March 3, 1875, hereinbefore mentioned, and the maps and field-notes of the eighth section thereof were approved and the line thereof located by the said Board of Trustees on the 27th day of December, 1899.

IX.

And your orator further shows, that thereafter the maps of the first, second, third and fourth sections thereof were duly filed in the land office of the Walla Walla land district, Washington, on the 21st day of March, 1900, and the maps and field-notes of the fifth, sixth and seventh sections thereof were duly filed in the land office of the Vancouver Land District, at Vancouver, Washington, on the 19th day of October, 1900, and the maps and the profiles of the eighth section thereof were duly filed in the land office of the Vancouver land district at Vancouver, Washington, on the 29th day of December, 1900, the said Walla Walla land district at Walla Walla, Washington, being the land district in which the land traversed by the line described in the maps so filed at Vancouver was situated. And each of said maps were duly filed of record by the Register of the said

land office respectively, as required by the said act of Congress and the regulations thereunder, and have ever since remained and are now of record in said land office.

That duplicates of each of the said maps were respectively transmitted to the Honorable Secretary of the Interior, immediately after the same were approved by the Board of Trustees as aforesaid, and the said Honorable Secretary received and filed the same as required by the said act of Congress and the regulations of the said department described as aforesaid, and as to the said eighth section of the said land as aforesaid, the map thereof was duly approved by the said Honorable Secretary of the Interior at Washington, D. C., on the 29th day of September, 1900.

X.

And your orator further shows, that the said right of way (being 100 feet on each side of the central line thereof) and said line of railway as so surveyed and located and so designated upon the said maps as aforesaid traverse, SE. 1/4 of the SW. 1/4 in section 21, township 3 north, range 10 east of the Willamette Meridian, lots 1, 3, and 4, in section 29, township 3 north of range 10, east of the Willamette Meridian, lots 4 and 5, section 30, township 3 north of range 10 east of the Willamette Meridian, lots 3, 4 and 5, section 25, township 3 north of range 9 east

of the Willamette Meridian, lot 1, section 35, township 3 north of range 9 east of the Willamette Meridian, lots 1 and 2, section 34, township 3 north of range 9 east of the Willamette Meridian, lots 1, 2, 3, and 4, section 33, township 3 north of range 9 east of the Willamette Meridian, lots 2, 3 and 4, section 32, township 3 north of range 9 east of the Willamette Meridian, and lots 3 and 4, section 35, township 3 north of range 8 east of the Willamette Meridian.

That at the time of the organization of your orator the making and filing of its Articles of Incorporation under the laws of the State of Washington, and at the date of the filing of the copy of its Articles of Incorporation, and the proofs of its organization under the same, with the Secretary of the Interior, and at the time of making the said surveys, maps and field-notes, and at the time of approving the said maps and adopting the said line of railway as aforesaid by the Board of Directors of your orator, as aforesaid, all of the above described land and each and every subdivision thereof were public lands of the United States, and were not then or there within the limits of any military, park, or Indian Reservation and were not specially reserved from sale, and were and are subject to the grant made in the said act of Congress on March 3, 1875, hereinbefore referred to.

XI.

And your orator further shows, that by reason of the premises your orator, prior to the 27th day of December, 1899, became and ever since has been and now is the owner of the right of way through all the public lands above described and traversed by the said railway to the extent of 100 feet on each side of the central line of its said railroad as the same was so surveyed, located and adopted from the said point opposite Wallula to the said point described as the end of the survey of the said one hundred and sixty miles thereof.

XII.

And your orator further shows that all the said steps taken as aforesaid by your orator were taken in good faith for the purpose of constructing a railroad along the route described in its Articles of Incorporation, and your orator at all times since its incorporation has been and now is actively engaged in prosecuting the said enterprise, and desires and intends to construct with reasonable dispatch, and operate a railroad over said line described in its articles of incorporation, from a point opposite Wallula to a point near the mouth of the Columbia River for the carriage of freight and passengers in accordance with its article of incorporation, and is in all respects conforming to and intends to conform to the provisions of the said Act of Congress hereinbefore

referred to, and the regulations of the said Secretary of the Interior relative to survey, location and construction of its said railroad.

XIII.

And your orator further shows that it was at the time of the institution of this suit and it is now in the actual possession of its right of way over the said public land hereinbefore described, as it traverses lot 1, section 35, lots 1 and 2, section 33, and lots 2 and 3, in section 32, all in township 3, north of range 9, east of the Willamette Meridian, and lot 4, section 35, township 3, north of range 8, east of the Willamette Meridian, and is now and has been, for some time prior hereto, actually and actively engaged in the building and construction of a grade for its railroad therefor and thereon, and is now expending and has heretofore expended large sums of money in and for said construction, and has completed the grade upon some portion thereof.

XIV.

And your orator further shows that about the 29th day of December, 1905, the defendant, the Portland and Seattle Railway Company, through its officers, agents, servants and employees, wrongfully and without authority of law, or the consent of your orator entered upon a part of the right of way hereinbefore described, which lays upon the public lands

of the United States hereinbefore described, and particularly upon the following described parts thereof: SE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ in section 21, township 3 north of range 10 east of the Willamette Meridian, lots 1, 3 and 4, section 29, township 3 north of range 10 east of the Willamette Meridian, lots 4 and 5, section 30, township 3 north of range 10 east of the Willamette Meridian, lots 3, 4 and 5, section 25, township 3 north of range 9, east of the Willamette Meridian, lots 1 and 2, section 34, township 3 north of range 9 east of the Willamette Meridian, lots 2, 3 and 4, section 33, township 3 north of range 9 east of the Willamette Meridian, lot 4, section 32, township 3 north of range 9 east of the Willamette Meridian, and lot 3, section 35, township 3 north of range 8 east of the Willamette Meridian.

That at the time the defendant so entered upon said premises your orator's maps of location had been filed with the Honorable Secretary of the Interior, and by such officer approved, which fact defendant, before entering said premises, well knew, and the location of your orator's said railroad was plainly and distinctly marked upon the ground, as hereinbefore more fully shown, and of which fact the defendant had actual knowledge. Notwithstanding said well-known premises, defendant wrongfully and unlawfully, and without right or authority, made an attempted location of and for its railroad upon your

orator's said right of way. Defendant's said attempted location was not only made upon that portion of your orator's right of way which traverses the land in this paragraph described, but upon all of your orator's right of way that traverses any of the land mentioned or described in this bill. And though the defendant could have so located its line as not to have materially affected, or in any manner interfered with, or injured or destroyed, your orator's right of way, the defendant, by deliberate act, design, and intent so located its line that the same would not only conflict with your orator's location, but would prevent the use of the said right of way so acquired as aforesaid by your orator, by making it physically and financially impossible to construct a railroad upon your orator's fixed and located line.

That the defendant made its location so that when a railroad was constructed on such attempted location no other railroad could be located, constructed and operated in Skamania County, Washington, on the north bank of the Columbia River, except at a cost which would be prohibitory.

That the line of your said orator is so located as permits the location and construction of another line of railroad on the north bank of the Columbia River, but the construction of a railroad on the defendant's attempted location will prevent the building of any

other railroad on the said bank of the Columbia River.

That upon that portion of your orator's right of way which passes over and through the land described in this paragraph, the defendant is now wrongfully and without authority constructing a railroad grade on defendant's said attempted location, and has sent and placed thereon its men, teams and apparatus, and is engaged in excavating the ground thereon, and making fills, cuts and embankments, with intent to construct and operate a line of railway over said defendant's location, and defendant intends and declares that it will continue the said work of constructing its said railway on said defendant's attempted location over and upon said right of way of your orator, from its beginning point to its ending point, as hereinbefore described, over and across the public lands aforesaid, and has wrongfully and without authority entered upon the lands described in this paragraph, for the purpose of building, constructing and operating its said railroad, and threatens and intends, and will, unless restrained by your Honors, enter upon the right of way of your orator through your orator's entire line, for the purpose of constructing and operating a railway upon said defendant's attempted location, and for the further purpose of preventing your orator from con-

structing and operating a railway upon your orator's located line.

That the curves in defendant's grade differ from the curves shown by your orator's located line, and the height of said grade differs from the height of your orator's grade, as shown by the profiles filed with the Secretary of the Interior, and if the defendant be allowed to complete its grade, such grade will greatly add to the expense of constructing a grade on the location of your orator, and in some places will prevent such construction, except at such expense as would be absolutely prohibitory.

That in constructing said grade the defendant is borrowing large quantities of material from your orator's said right of way, and is using, and threatening to use, said material in the construction of the grade of the defendant, and such action on the part of the defendant will greatly and materially add to the expense of constructing a grade in many places on the location of your orator, and at other places will cause expense so great as to make the construction of a grade prohibitory.

That the work which the defendant has already done will increase the expense of constructing a railroad on your orator's location to amount far in excess of two thousand dollars.

XV.

And your orator further shows that the defendant

unlawfully and without authority intends and threatens, and will, unless restrained by your Honors, attempt to, and enter in and upon that portion of the land upon which is your orator's right of way, described in paragraph XIII of this bill, which is now in possession of your orator, and upon which your orator is now engaged in constructing its grade for its railroad, and that the defendant will and intends to enter upon the said land unless restrained by your Honors, and destroy and injure your orator's said grade located thereon, and prevent your orator from further building and constructing its grade thereon, to your orator's irreparable injury and damage.

XVI.

And your orator further shows that the defendant disputes the right and title of your orator to the right of way hereinbefore described over the public lands hereinbefore described, upon the ground that more than five years have elapsed since the location of the said eighth section of twenty miles of your orator's said road as aforesaid, and that the said eighth section of said railroad has not been completed within five years from the said location, and claims and pretends that under and by virtue of the provisions of the said act of March 3, 1875, the right and title of your orator to the right of way over the said public lands hereinbefore described were and

are forfeited as to the said section of said road, and claims the said alleged forfeiture under and by virtue of the provisions of section 4 of the said act of March 3, 1875, which is to the effect that if any section of the said road shall be completed within five years after the location of the said section, the rights herein granted shall be forfeited as to any such uncompleted section of said road; and the defendant pretends and claims that by virtue of the said provision, the failure of your orator to complete the said section within the said five years of itself and without any judicial proceeding or Congressional action works such forfeiture.

XVII.

And your orator further shows that the defendant further pretends and claims the right to go upon your orator's said right of way and to build its said road thereon by virtue of various act of Congress.

It claims a right paramount to your orator's right to enter upon and construct its road over lot 5 of section 25, lot 1 of section 35, and lot 3 of section 32, in township 3 N., R. 9 east of the Willamette Meridian, and lot 4 in section 35, township 3 N., R. 8 east of the Willamette Meridian, under and by virtue of the act of Congress of date July 1, 1898, which act, among other things, in substance and effect granted to the Northern Pacific Railroad Company, or its lawful successors, the right upon the relinquishment

of other lands within the grant of the said Northern Pacific Railroad Company, to select in lieu of the land relinquished an equal quantity of certain public lands, surveyed or unsurveyed, not mineral or reserve, and not valuable for stone, iron or coal, and free from valid adverse claim, and not occupied by settlers at the time of such location, situated in any State or Territory into which the said railroad grant extended; and among other things the said grant provides, in section 1 thereof, "that the Secretary of the Interior shall from time to time ascertain, and as soon as conveniently may be done cause to be prepared and delivered to the said railroad or its successors in interest a list or lists of the several tracts which had been purchased or settled upon or occupied, and which were claimed by purchasers or occupants.

And the defendant pretends and claims that the said Secretary of the Interior, in pursuance of the said act, made a list, which is number 181, and which was filed September 5, 1905, and which included the land hereinbefore last described, and under and in pursuance of the said act of Congress July 1, 1898, the said Northern Pacific Railroad Company, which the defendant claims was the lawful successor of the Northern Pacific Railroad Company, became and was entitled to own and possess the said land, and the defendant claims that the said Northern Pacific

Railroad Company has conveyed to the defendant its said rights in the premises, and that its said right to enter upon the said land and construct its line is paramount and superior to your orator's said right of way.

The defendant claims the right to go upon and occupy lot 1 of section 29, township 3 north of range 10 east of the Willamette Meridian, under and by virtue of an act of Congress of June 3, 1878, commonly called the timber and stone act, and pretends and claims that one, Heinrich Kapp, by compliance with the terms of the said act, became the owner of the said land long subsequent to the time of the location of your orator's line as aforesaid, and that the said Heinrich Kapp, by some contract or agreement, has granted to the defendant the right to go upon the said land and do the acts of which your orator complains as aforesaid. And the defendant claims the right to go upon lots 4 and 5 of section 30 of the said township and range under and by virtue of the homestead laws of Congress, and claims that the said Heinrich Kapp filed a homestead thereon on the 28th day of December, 1903, and has since deeded to the defendant the said lots.

XVIII.

Your orator further shows that the defendants claim the right to go upon lots 1 and 2 of section 34, township 3 N., R. 9 east of the Willamette Meridian,

and construct its line of railway as aforesaid by virtue of the homestead laws of Congress, and claim and pretend that at the time of the location of your orator's line as aforesaid, one, Samuel Martin, claimed a homestead on said lots, but said homestead was canceled March 23, 1901, and that defendant claims that under the said acts of Congress your orator has no right of way on the said lots in said section 34.

The defendant pretends and claims the right to enter upon and hold lots 1, 2, 3 and 4 in section 33, township 3 north, range 9 east of the Willamette Meridian, under an act of Congress called the homestead act, and that Paul Paulson filed a homestead on the said lots on August 11th, 1905, and has contracted with the defendant to give it the right of way occupied by your orator's right of way over the said lots.

The defendants claim the right to go upon lot 2 of section 32, township 3 N., R. 9 east of the Willamette Meridian, under the said timber and stone act hereinbefore referred to, of June 3, 1878, and claims that A. Fleischner made an application under said act for said land, dated April 22, 1903, and became entitled to the possession of the said land, and has contracted with the defendants for its pretended right of way as aforesaid.

And the defendant claims the right to go upon lot 4, section 32, township 3 north, of range 9 east, W. M., under the homestead act of Congress, and claims that Paul Paulson, under the terms of the said act, became and was entitled to the said lot 4 as a homestead, on the 11th day of August, 1905, and has conveyed to the defendant the right to go upon your orator's right of way as aforesaid.

The defendant claims the right to enter upon your orator's right of way in lots 3 and 4 of section 35, township 3 north of range 8 east, of the Willamette Meridian, under and by virtue of the homestead act of Congress, and pretends and claims that Thomas Menice had a homestead at the time of your orator's location of its said right of way, which subsequently relinquished by him, and that by virtue of said act that your orators have no right of way over the said lots.

That the defendant makes no pretense or claim controverting your orator's right and title to its said right of way, or maintaining its own right and title to the said right of way, or to justify the said acts of trespass and threatened trespass, except rights that arise under the said several acts of Congress, and that in determining the respective rights of your orator and the defendant in and to the said land and their priorities, it will be necessary for this Court to consider, construe and apply the said acts of Con-

gress, and the said act of Congress approved March 3, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States."

That the defendant pretends to own and claims the right to occupy your orator's said right of way for the construction of the defendant's road, and by its agents, servants, and employees, contractors and subcontractors is continually trespassing and threatening to trespass upon the said right of way as aforesaid.

That unless the defendant shall be restrained and enjoined from continuing its said trespasses and threatened trespass aforesaid, your orator will be required to bring multiplicity of suits against the defendant and against its several employees, servants and agents to prevent the said injury and the said wrongful acts, and that your orator's injury cannot be compensated in damages.

XIX.

And your orator further shows that the value of the said right of way over the lands described in paragraph X in this bill exceeds the sum of two thousand dollars (2,000), and that the value of the right of way over the lands described in paragraph XIII of this bill exceed the sum of two thousand dollars (\$2,000), and that the value of the said right of way over lands described in paragraph XIV of

this bill exceed the sum of two thousand dollars (\$2,000), and that the amount in dispute herein exceeds the sum of two thousand dollars (\$2,000), exclusive of interest and costs.

And your orator further shows that your orator has no plain, speedy or adequate remedy at law.

XX.

To the end that your orator may obtain the relief to which it is justly entitled in the premises, it now prays the Court to grant it due process by subpoena directed to the said Portland and Seattle Railway Company, defendant hereinbefore named, requiring it to appear herein and answer, but not under oath, the same being expressly waived, the several allegations in this, your orator's second amended bill contained, and that the said defendant, The Portland and Seattle Railway Company, and its servants, agents and employees and all other under or by its direction be enjoined and restrained from entering upon any of the said lands described in this amended bill in paragraph X, XIII, and XIV, within your orator's said right of way and from constructing any part of its railway thereon, and from making any excavations or doing any of the things aforesaid which obstruct, retard or prevent your orator from using its said right of way or from constructing and operating its said line of railway as described in this bill, and that pending this suit a preliminary injunc-

tion shall be granted against the defendant, The Portland and Seattle Railway Company, enjoining and restraining the said defendant from doing any or all of the acts complained of in this amended bill, and that pending the decision upon the application for a preliminary injunction herein, that the Court may grant an order restraining the said acts until the decision upon the said motion.

And your orator further prays for such other and further relief as may be just, meet and equitable, and for your orator's costs and disbursements.

COLUMBIA VALLEY RAILROAD COM-
PANY,

ARTHUR C. SPENCER,

RALPH E. MOODY,

Solicitors.

W. W. COTTON,

Of Counsel.

State of Oregon,

County of Multnomah,—ss.

I, L. Gerlinger, being first duly sworn, depose and say: I am the president and managing agent of the complainant, the Columbia Valley Railroad Company, named in the foregoing second amended bill of complaint. I have heard the same read and know the contents thereof, and I believe the same to be true, and that I make this verification as such presi-

dent and managing agent of said orator corporation and for and in its behalf.

L. GERLINGER.

Subscribed and sworn to before me this 15th day of September, 1906.

[Seal]

R. MOODY,

Notary Public for Oregon, Residing at Portland, said State.

Rec'd copy this 15th day of September, 1906.

JAMES B. KERR,

Solicitor for Defendant.

[Endorsed]: Second Amended Bill of Complaint. Filed this 17th day of Sept., 1906. A. Reeves Ayres, clerk. By A. N. Moore, Deputy. Refiled in the U. S. Circuit Court, Western Dist. of Washington. Nov. 14, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

*In the Circuit Court of the United States for the
Western District of Washington.*

COLUMBIA VALLEY RAILROAD COMPANY
(a Corporation),

Complainant,

vs.

PORTLAND & SEATTLE RAILWAY COM-
PANY (a Corporation),

Defendant.

**Affidavit of P. L. Wise on Motion for Preliminary
Injunction.**

State of Oregon,
County of Multnomah,—ss.

I, P. L. Wise, being first duly sworn, depose and say, that I am a civil engineer and have had extensive experience in the location, construction and building of railroad lines and grades; that I am familiar and acquainted with the location of the line of the railroad of the Columbia Valley Railroad Company, over the lands described in your orator's second amended bill herein, and that I am also acquainted with the attempted and alleged location of the line of railroad on the said land made by the defendant herein; that the said lines of the defendant conflict with the lines of your orator, and that the construction of a grade upon said defendant's line would in many places over the lands described in your orator's second amended bill, prevent, except at a cost that would be prohibitory, the grading and constructing of a line upon your orator's said located line. That further and continued construction of the grade upon defendant's location, by the defendant, where said defendant is now engaged in constructing its grade upon the land described in your orator's second amended bill, would prevent the

Columbia Valley Railroad Company from constructing and grading its line of railway upon its said located line except at a very great cost, and should the defendant be permitted to enter upon that portion of its attempted located line that is within the limits of the right of way of the Columbia Valley Railroad Company, to construct a grade thereon, at those points where the said Columbia Valley Railroad Company is now engaged in the construction of its railroad upon its located line, as described in your orator's second amended bill, would destroy and injure the said grades thus far constructed by the said Columbia Valley Railroad Company, and would prevent the said Columbia Valley Railroad Company from completing its grade upon said last mentioned premises.

P. L. WISE.

Subscribed and sworn to before me this 15th day of September.

[Seal]

R. E. MOODY,

Notary Public for Oregon Residing at Portland,
said State.

Service by copy admitted this 15th day of September, 1906.

JAMES B. KERR,
Solicitor for Defendant.

[Endorsed]: Affidavit. Filed this 17th day of Sept. 1906. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the Circuit Court of the United States for the
Western District of Washington.*

THE COLUMBIA VALLEY RAILROAD COM-
PANY (a Corporation),

Complainant,

vs.

THE PORTLAND & SEATTLE RAILWAY
COMPANY (a Corporation),

Defendant.

**Affidavit of L. Gerlinger on Motion for Preliminary
Injunction.**

State of Oregon,
County of Multnomah,—ss.

I, L. Gerlinger, being first duly sworn, depose and say, that at all of the times hereinafter mentioned I was, ever since have been, and now am the duly elected, qualified and acting president of your orator, the Columbia Valley Railroad Company, and that I make this affidavit on behalf of the orator, in the above-entitled proceeding for the purpose of obtaining a restraining order and an injunction in said cause against the above-named defendant, the Port-

land & Seattle Railway Company, a corporation, as prayed for in the second amended bill of your orator filed herein. That your orator, The Columbia Valley Railroad Company, now is and ever since the 16th day of February, 1899, has been a corporation duly organized and existing under and virtue of the laws of the State of Washington, for the purpose of building, equipping, operating and acquiring a railroad and telegraph line from Wallula, on the south bank of the Columbia River, in the State of Washington; thence across at a point at or near Wallula, and thence by some eligible route along the north bank of the Columbia River to a point in the State of Washington on the Columbia River at or near the mouth of the said river; and to maintain, operate, lease, construct and acquire the said railroad and telegraph line or lines, to carry freight and passengers thereon, and transmit messages thereover, and to receive tolls for the carrying and transmitting of the same, and to do all things necessary and proper for the accomplishment of the objects as specified in its articles of incorporation.

That your orator claim and own a right of way over the public lands of the United States, particularly described in your orator's second amended bill which is hereby referred to, under and by virtue of the provisions of an act of Congress approved March 3, 1875, entitled "An act granting to railroads the

right of way through the public lands of the United States," and the regulations of the Secretary of the Interior thereunder. That on the 7th day of April, 1899, your orator, for the purpose of obtaining said right of way, caused a copy of its articles of incorporations and due proof of its organization under the same, duly certified to by the president of your orator, under its corporate seal, to be filed with the Secretary of the Interior, together with a duly certified copy of the laws of the State of Washington, under which said corporation was organized in all respects as required by the said law and the said regulations, and the proper certificate of the officers of said State of Washington, as required by said regulation, that the said articles had been filed with the said officers according to law, with the date of the filing thereof, and that the organization of the said corporation had been complete, and that the company was fully authorized to proceed with the construction of its road according to the existing law of said state, and the certificate by the said L. Gerlinger as president, showing the names and designation of its officers at the time of the filing of the said proofs, and in all respects conforming to the requirements of the said act of Congress and of the said regulations, which was approved by the said Secretary of the Interior. That your orator caused profile maps to be made of its said right of way as aforesaid

and as more fully stated in your orator's second amended bill, which maps were fully approved, and the location of the said line duly approved by the Board of Trustees of your orator corporation, for the purpose of obtaining said right of way, and caused duplicates of said maps to be filed with the Honorable Secretary of the Interior, and in the United States Land Office of the proper district, as more fully appears in your orator's second amended bill to which reference is hereby made, and that the said maps were approved by the Honorable Secretary of the Interior at the date, time and manner, and in the form more fully set forth in your orator's second amended bill, and reference is hereby made to the said bill for greater certainty, and said bill is hereby made a part of this affidavit. That the said right of way traverses the lands described in the X paragraph of your orator's second amended bill. That the said lands, at the time that your orator obtained the said right of way thereover, were public lands of the United States, subject to the said act of Congress described, and that all of the steps were taken by your orator in good faith, for the purpose of constructing a railroad along the said route, and that your orator is prosecuting said construction with all reasonable dispatch, and intends to continue to do so until the said road shall be completed and in operation, and that your orator is now in actual

possession and actively engaged in the construction of its railroad over its said located line as the same traverses the lands described in the XIII paragraph of your orator's second amended bill.

Your affiant further says that the defendant, through its officers, agents, servants and employees, on or about the 29th day of December, 1905, wrongfully, and without right or authority, entered upon the right of way of your orator's line at different points thereon, and particularly upon that portion of your orator's right of way which traverses the lands described in the XIV paragraph of your orator's second amended bill. And that the said defendant, subsequent to the time that your orator had obtained its right of way over the said public lands, and subsequent to the time that your orator had plainly marked its location upon the ground, as more particularly set forth in your orator's second amended bill, and with full knowledge by the defendant of these facts, and the rights of your orator, the said defendant wrongfully, unlawfully, and without right or authority, attempted to locate upon said public land within the limits of your orator's right of way, for the purpose of constructing, building and operating a railroad thereon and for the further purpose of hindering, delaying, and preventing your orator from building, constructing and operating a railroad upon your orator's fixed and lo-

cated line; and that the said defendant is now engaged in the construction of a grade upon said defendant's attempted location, and if the defendant is permitted and allowed to grade and to construct its line upon its said attempted location, it will, on a great part thereof prevent your orator from constructing its railroad upon its located line, except at a cost that makes it absolutely prohibitory, and that the defendant threatens to and intends, and will, unless restrained by your Honors, continue the construction of its grade upon said defendant's attempted location, to the irreparable injury and damage of your orator; and that the said acts interfere with your orator in the construction and operation of its road, and prevent your orator from using the same, and to permit the defendant to continue in its act of trespass and waste, your orator will be prevented irreparably from prosecuting or carrying out the purposes of its incorporation, and of the building and operating of the railroad upon its located and fixed line over the lands aforesaid. That the defendant intends and threatens, and will unless restrained by your Honors, to enter in and upon that portion of your orator's right of way which traverses the lands described in paragraph XIII of your orator's second amended bill, and upon which your orator is now actively engaged in the construction of its railroad, and that the defendant will upon such

entry, injure and destroy the work performed and being performed by your orator upon its said right of way over the last described premises, to your orator's irreparable injury and damage.

L. GERLINGER.

Subscribed and sworn to before me this 15 day of September, 1906.

[Seal]

R. E. MOODY,

Notary Public for Oregon Residing at Portland, said State.

Service by copy admitted this 15th day of September, 1906.

JAMES B. KERR,

Solicitor for Defendant.

[Endorsed]: Affidavit. Filed this 17th day of Sept. 1906. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the Circuit Court of the United States for the
Western District of Washington.*

THE COLUMBIA VALLEY RAILROAD COM-
PANY (a Corporation),

Complainant,

vs.

PORTLAND AND SEATTLE RAILWAY COM-
PANY (a Corporation),

Defendant.

Motion for Preliminary Injunction.

Comes now the complainant and moves the Court to grant a preliminary injunction against the defendant herein, as prayed for in complainant's second amended bill. This motion is based upon complainant's second amended bill, and the affidavits of L. Gerlinger and P. L. Wise filed herein.

RALPH E. MOODY,
Solicitor.

Service by copy admitted this 15th day of September, 1906.

JAMES B. KERR,
Solicitor for Defendant.

[Endorsed]: Motion for Preliminary Injunction. Filed this 17th day of Sept. 1906. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the Circuit Court of the United States for the
Western District of Washington.*

THE COLUMBIA VALLEY RAILROAD COM-
PANY (a Corporation),
Complainant,

vs.

PORTLAND AND SEATTLE RAILWAY COM-
PANY (a Corporation),
Defendant.

Notice of Application for Preliminary Injunction.

To the Portland & Seattle Railway Co., Defendant:

You are hereby notice that the complainant will apply to the above-entitled court on the 25th day of September, 1906, at the hour of 10 o'clock, A. M., or as soon thereafter as counsel can be heard, for a preliminary injunction against the defendant, as prayed for in complainant's second amended complaint, which application and motion will be based upon said second amended bill, and the affidavits of L. Gerlinger and P. L. Wise, copies of which are herewith served upon you.

RALPH E. MOODY,
Solicitor.

Service by copy admitted this 15th day of September, 1906.

JAMES B. KERR,
Solicitor for Defendant.

[Endorsed]: Notice of Application for Preliminary Injunction. Filed this 17th day of Sept. 1906. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision, Sitting at Seattle.*

COLUMBIA VALLEY RAILROAD COMPANY,
Complainant,

vs.

PORTLAND AND SEATTLE RAILWAY COM-
PANY,
Defendant.

**Motion to Vacate Order Allowing Filing of Second
Amended Complaint and for Order to Strike
Second Amended Complaint.**

Comes now the defendant above named and moves the Court for an order vacating the order heretofore entered herein allowing the complainant leave to file a second amended bill of complaint herein, upon the ground that said order was entered without notice

to the defendant as required by the rules of this court.

The defendant further moves the Court for an order to strike from the files of this court the second amended bill of complaint herein, upon the ground that the same contains matters and things by way of amendment not permitted by the order heretofore entered in this cause authorizing the filing of a second amended bill of complaint, in this, that said bill of complaint sets out by way of amendment matters and things happening after the commencement of this suit.

JAMES B. KERR,

GEORGE T. REID,

Solicitors for Defendant.

Due service of within motion is hereby accepted this —— day of October, 1906, with receipt of copy thereof. . See stipulation filed herewith.

Solicitor for Compl't.

[Endorsed]: Motion of Deft. to strike 2d Am. Bill from Files and to Vacate Order Allowing Same to be Filed. Filed in the U. S. Circuit Court, Western Dist. of Washington. Oct. 24, 1906. A. Reeves Ayres, Clerk. R. M. Hopkins, Dep.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision, Sitting at Seattle.*

COLUMBIA VALLEY RAILROAD COMPANY,
Complainant,

vs.

PORTLAND AND SEATTLE RAILWAY COM-
PANY,

Defendant.

**Stipulation Relative to Motion to Strike Second
Amended Complaint, etc.**

It is hereby stipulated by and between the parties hereto that service is hereby admitted of a copy of the motion of the defendant filed herein to vacate the order of this Court permitting the filing of a second amended bill of complaint, and to strike from the files of this court the second amended bill of complaint filed herein.

It is further stipulated that said motion shall be argued and submitted at some time to be hereafter agreed upon between the respective parties, and that the time of the defendant to plead, answer, or demur

to the amended bill of complaint shall be extended until after the decision of the court upon said motion.

Dated October 22, 1906.

RALPH E. MOODY,

Solicitor for Complainant.

JAMES B. KERR,

GEORGE T. REID,

Solicitors for Defendant.

[Endorsed]: Stipulation re Motion of Deft. to Strike 2d Am. Bill from Files, etc. Filed in the U. S. Circuit Court, Western Dist. of Washington, Oct. 24, 1906. A. Reeves Ayres, Clerk. R. M. Hopkins, Dep.

*Circuit Court of the United States, Western District
of Washington.*

COLUMBIA VALLEY RAILROAD COMPANY,
Complainant,

vs.

PORTLAND & SEATTLE RAILWAY COM-
PANY,

Defendant.

**Order Granting Motion to Strike Second Amended
Complaint, etc.**

The motion of the defendant to strike from the files herein the second amended bill of complaint coming on to be heard, it is hereby ordered that the

same is hereby granted, and said second amended bill is hereby ordered to be so stricken by the Court.

Dated Nov. 14, 1906.

C. H. HANFORD,

Judge.

[Endorsed]: Order to Strike 2d Amended Bill of Complaint. Filed in the U. S. Circuit Court, Western Dist. of Washington. Nov. 14, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

*In the Circuit Court of the United States for the
Western District of Washington.*

THE COLUMBIA VALLEY RAILROAD COM-
PANY (a Corporation),

Complainant,

vs.

PORTLAND AND SEATTLE RAILWAY COM-
PANY,

Defendant.

**Order Granting Application to File Second Amended
Complaint.**

Now on this 14th day of November, 1906, the application to file a second amended bill having come regularly on, the plaintiff appearing by its attorneys, W. W. Cotton and Ralph E. Moody, and the defendant appearing by its attorneys, James B. Kerr and

Geo. T. Reid, and the Court being fully advised in the premises, it is hereby ordered that the application to file said amended bill be, and the same is hereby, granted, the leave to file said amended bill is upon the condition that complainant pay to defendant the sum of ten dollars.

C. H. HANFORD,
Judge.

[Endorsed]: Order to file 2d Am. Bill of Complaint. Filed in the U. S. Circuit Court, Western Dist. of Washington. Nov. 14, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision, Sitting at Seattle.*

IN EQUITY.

COLUMBIA VALLEY RAILROAD COMPANY,
Complainant,

vs.

PORTLAND AND SEATTLE RAILWAY COM-
PANY,
Defendant.

Demurrer to Second Amended Bill of Complaint.

Comes now the defendant above named and demurs to the second amended bill of complaint herein, and for grounds of demurrer specifies:

First.—That this Court has no jurisdiction in the above-entitled cause;

Second.—That said second amended bill of complaint does not state facts which entitle the complainant to relief;

Third.—That said second amended bill of complaint is in the nature of a supplemental bill of complaint, and the original bill on file herein fails to state facts which entitle the complainant to relief;

Fourth.—That it appears upon the face of said second amended bill of complaint that the complainant has been guilty of such laches in the prosecution of this cause that it is not entitled to the relief sought.

JAMES B. KERR,
GEORGE T. REID,
Solicitors for Defendant.

United States of America,
Western District of Washington,
County of Clarke,—ss.

James B. Kerr, being duly sworn, on oath says:
That he is an officer, to wit, the assistant secretary

of the Portland and Seattle Railway Company, defendant above named, and makes this affidavit for and on its behalf; that the foregoing demurrer is not interposed for the purpose of delay.

JAMES B. KERR.

Subscribed and sworn to before me this 12th day of November, 1906.

[Seal] H. A. SMITH,
Notary Public for Washington, Residing at Vancouver, in Clarke County.

I, James B. Kerr, solicitor for the defendant above named, hereby certify that the foregoing demurrer is, in my opinion, in point of law well taken.

JAMES B. KERR,
Solicitor for Defendant.

[Endorsed]: Demurrer to Second Amended Bill of Complt. Filed in the U. S. Circuit Court, Western Dist. of Washington. Nov. 14, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

*In the Circuit Court of the United States for the
Western District of Washington, Sitting at
Seattle.*

COLUMBIA VALLEY RAILROAD COMPANY,
Complainant,

vs.

PORTLAND AND SEATTLE RAILWAY COM-
PANY,

Defendant.

**Order Sustaining Demurrer to Second Amended
Complaint.**

The demurrer of defendant to the second amended
bill of complaint is hereby sustained.

Dated Nov. 14, 1906.

C. H. HANFORD,
Judge.

Complainant excepts and the exception is allowed:

[Endorsed]: Order Sustaining Demurrer to 2d
Amended Bill of Complaint. Filed in the U. S. Cir-
cuit Court, Western Dist. of Washington. Nov. 14,
1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

*In the Circuit Court of the United States for the
Western District of Washington.*

No. 1384.

THE COLUMBIA VALLEY RAILROAD COM-
PANY (a Corporation),

Complainant,

vs.

PORTLAND & SEATTLE RAILWAY COMPANY
(a Corporation),

Defendant.

Decree.

This Court having heretofore sustained a demurrer to the second amended bill of the complainant, upon the ground that this Court was without jurisdiction in the premises, in that the bill failed to state facts sufficient to justify the interposition of the court of equity, and the complainant declining and refusing to further plead, but electing to stand upon the allegations contained in its second amended bill:

Now, therefore, it is hereby ordered, adjudged and decreed that this cause be, and the same is hereby dismissed upon the ground and for the reason that this Court has no jurisdiction in the premises,

in that the bill of complaint of complainant fails to state facts sufficient to entitle the complainant to equitable relief, and it is further ordered that the defendant have judgment against the complainant for its costs and disbursements herein, taxed at the sum of ——— dollars.

C. H. HANFORD,

Judge of the Circuit Court of the United States for
the Western District of Washington.

[Endorsed]: Decree. Filed this 11th day of Feb.,
1907. A. Reeves Ayres, Clerk. By A. N. Moore,
Deputy.

*In the Circuit Court of the United States for the
Western District of Washington.*

THE COLUMBIA VALLEY RAILROAD COM-
PANY (a Corporation),

Complainant,

vs.

THE PORTLAND AND SEATTLE RAILWAY
CO. (a Corporation),

Defendant.

Petition for Appeal.

The Columbia Valley Railroad Company, the
above-named complainant, conceiving itself ag-
grieved by the final decree, order and judgment, en-

tered in the above-entitled cause, on the 11th day of February, 1907, hereby appeals from said final decree, order and judgment, and the whole thereof, to the United States Circuit Court of Appeals of the Ninth Circuit, and the Columbia Valley Railroad Company, prays that this, its appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, may be allowed, and that a transcript of the record and proceeding and papers, upon which said final decree, order and judgment were made, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Ninth Circuit.

And now at the time of filing this petition for appeal, the Columbia Valley Railroad Company, appellant, files an assignment of errors, setting up separately and particularly, each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner will ever pray.

Dated at Portland, Oregon, this 6 day of August, 1907.

THE COLUMBIA VALLEY RAILROAD CO.

Appellant.

By W. W. COTTON,

RALPH E. MOODY,

Solicitors.

[Endorsed]: Petition for Appeal. Filed this 9th day of August, 1907. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the Circuit Court of the United States for the
Western District of Washington.*

THE COLUMBIA VALLEY RAILROAD COM-
PANY (a Corporation),

Complainant,

vs.

THE PORTLAND AND SEATTLE RAILWAY
CO. (a Corporation),

Defendant.

Order Allowing Appeal.

Now on this 9th day of August, 1907, the petition of the complainant, The Columbia Valley Railroad Company, for and order allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree, order and judgment, rendered in this cause, by this Court on the 11th day of February, 1907, coming on regularly for hearing; and the Court being fully advised in the premises;

It is hereby ordered that the said appeal be and the same is hereby allowed.

C. H. HANFORD,

Judge of the Circuit Court of the United States, for
the Western District of Washington.

[Endorsed]: Order Allowing Appeal. Filed this 9th day of August, 1907. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the Circuit Court of the United States for the
Western District of Washington.*

THE COLUMBIA VALLEY RAILROAD COM-
PANY (a Corporation),

Complainant,

vs.

THE PORTLAND AND SEATTLE RAILWAY
CO. (a Corporation),

Defendant.

Assignment of Errors.

The Columbia Valley Railroad Company, the above-named complainant, having this day petitioned for an appeal from the final decree, order and judgment, entered in the above-entitled action, on the 11th day of February, 1907, hereby submits and herewith files its assignment of errors, asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit.

Comes now the said Columbia Valley Railroad Company, by its solicitors, and says that in the record and proceedings aforesaid, there is manifest error in this:

I.

That the United States Court for the Western District of Washington, erred in holding that complainant's second amended bill of complaint failed to state facts sufficient to justify the interposition of a court of equity, and that said court erred in holding that the complainant's remedy was at law.

II.

That the said Court erred in sustaining the demurrer of the defendant, to the complainant's second amended bill of complaint.

III.

That the said Court erred in making and entering an order sustaining the said defendant's demurrer to complainant's second amended bill of complaint.

IV.

That the Court erred in signing and entering a judgment and decree in favor of the defendant and against the complainant, dismissing this cause and suit and giving the judgment in favor of defendant and against the complainant for costs.

The said The Columbia Valley Railroad Company prays that the judgment, order and decree aforesaid may be reversed.

COLUMBIA VALLEY RAILROAD CO.,

Appellant.

By W. W. COTTON,

RALPH E. MOODY,

Solicitors.

[Endorsed]: Assignment of Errors. Filed this 9th day of August, 1907. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the Circuit Court of the United States for the
Western District of Washington.*

THE COLUMBIA VALLEY RAILROAD COM-
PANY,

Complainant,

vs.

THE PORTLAND & SEATTLE RAILWAY
COMPANY,

Defendants.

Bond on Appeal.

Know all men by these presents, that we, The Columbia Valley Railroad Company, a corporation, and the United States Fidelity & Guaranty Company, of Baltimore, Maryland, are held and firmly bound unto the Portland & Seattle Railway Company, for the sum of five hundred (\$500) dollars, to be paid to the said Portland & Seattle Railway Company, its successors or assigns. To which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors or assigns, firmly by these presents.

Sealed with our seals and dated this 7th day of August, 1907.

Whereas, the above named, Columbia Valley Railroad Company, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above-entitled cause, by the Circuit Court of the United States, for the Western District of Washington.

Now, therefore, the condition of this obligation is such, that if the above-named Columbia Valley Railroad Company, appellant, shall prosecute said appeal to effect, and answer all costs awarded against it, if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and virtue.

COLUMBIA VALLEY R. R. CO.,

By L. GERLINGER,

President.

E. W. M. RANDS,

Secretary C. V. R. R. Co.

THE UNITED STATES FIDELITY AND
GUARANTY COMPANY,

By JOHN P. HARTMAN, [Seal]

Its Attorney in Fact.

Signed, sealed and delivered in the presence of us
as witnesses:

[Seal] E. E. MOODY,
M. E. TODD.

The foregoing bond is hereby approved.

Done in open court this 9th day of August, 1907.

C. H. HANFORD,

Judge.

[Endorsed]: Bond. Filed this 9th day of August,
1907. A. Reeves Ayres, Clerk. By A. N. Moore,
Deputy.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 1384.

COLUMBIA VALLEY RAILWAY COMPANY,

Complainant,

vs.

PORTLAND & SEATTLE RAILWAY COM-
PANY,

Defendant.

Citation on Appeal (Copy).

The President of the United States of America to
Portland & Seattle Railway Company, a Cor-
poration, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held at the city of San Francisco, State of California, within thirty (30) days from the date of this writ, to wit, on the 8th day of September, 1907, pursuant to a notice of appeal and order of the Court allowing the same, filed in the clerk's office of the Circuit Court of the United States for the Western District of Washington, Northern Division, wherein Columbia Valley Railroad Company is complainant and now appellant, and you are defendant and appellee, to show cause, if any there be, why the judgment rendered against the said complainant and appellant, as in said notice of appeal and order allowing the same mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States of America, this 9th day of August, 1907, and of the Independence of the United States the one hundred and thirty-second.

[Seal]

C. H. HANFORD,
United States District Judge, Presiding in said
Court.

Due and personal service of the above citation and the receipt of a copy thereof is hereby admitted this 10th day of August, 1907.

JAMES B. KERR,

Attorney for Portland & Seattle Railway Company.

[Endorsed]: Citation. Filed in the U. S. Circuit Court, Western Dist. of Washington. Aug. 14, 1907. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

In the United States Circuit Court for the Western District of Washington.

THE COLUMBIA VALLEY RAILROAD COMPANY (a Corporation),
Complainant and Appellant,

vs.

THE PORTLAND AND SEATTLE RAILWAY COMPANY (a Corporation),
Defendant and Appellee.

Stipulation for Record on Appeal.

It is hereby stipulated and agreed by and between the complainant and appellant, the Columbia Valley Railroad Company, and the defendant and appellee, the Portland and Seattle Railway Company, that the record on appeal in this cause, and upon which this cause shall be heard and determined in

the Circuit Court of Appeals in the Ninth Circuit, shall be as follows:

Bill of complaint and appearance, filed February 2, 1906.

Demurrer of defendant to complaint, filed February 23, 1906.

Order sustaining demurrer and thirty days allowed to amend bill, February 23, 1906.

Amended bill of complaint, filed March 28, 1906.

Demurrer of defendant to amended bill of complaint, filed April 2, 1906.

Supplemental bill of complaint, filed August 1, 1906.

Motion for preliminary injunction, affidavit in injunction, notice filed August 1, 1906.

Demurrer of defendant to supplemental bill, filed August 7, 1906.

Memorandum of decision on application for injunction, filed September 5, 1906.

Order granting leave to file second amended bill, filed September 8, 1906.

Second amended bill of complaint, two affidavits, filed September 17, 1906.

Motion for preliminary injunction and notice, filed September 17, 1906.

Motion of defendant to strike second amended bill, stipulation, filed October 24, 1906.

Order to strike second amended bill, filed November 14, 1906.

Order granting leave to re-file second amended bill, filed November 14, 1906.

Second amended bill, re-filed November 14, 1906.

Demurrer to second amended bill, filed November 14, 1906.

Order sustaining demurrer to second amended bill, filed November 14, 1906.

Decree dismissing the cause, filed February 11, 1907.

Petition for appeal, order allowing appeal, assignment of errors, and bond, filed August 9, 1907.

Citation on appeal, with acceptance of service thereon, and this stipulation filed August 14, 1907.

It is hereby stipulated and agreed that this cause shall be heard and determined in the Court of Appeals aforesaid upon the foregoing record, briefs of respective parties, and oral argument.

It is hereby further stipulated and agreed that the clerk of the Court shall certify that the foregoing transcript shall constitute the entire record of this cause in the lower court.

Dated at Portland, Oregon, this 12th day of August, 1907.

RALPH E. MOODY,
Attorney for Complainant and Appellant.

JAMES B. KERR,
Attorney for Defendant and Appellee.

[Endorsed]: Stipulation. Filed in the U. S. Court, Western Dist. of Washington. Aug. 14, 1907. A. Reeves Ayres, Clerk. W. D. Covington, Dep.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 1384.

COLUMBIA VALLEY RAILROAD COMPANY,
Complainant,

vs.

PORTLAND & SEATTLE RAILWAY COM-
PANY,
Defendant.

Praeceptum for Transcript of Record.

To the Clerk of said Court:

For transcript on appeal to the Circuit Court of Appeals, you will please include the following:

Bill of complaint and appearance, filed February 2, 1906.

Demurrer of defendant to complaint, filed February 23, 1906.

Order sustaining demurrer and thirty days allowed to amend bill, February 23, 1906.

Amended bill of complaint, filed March 28, 1906.

Demurrer of defendant to amended bill of complaint, filed April 2, 1906.

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Memorandum of decision on application for injunction, filed September 5, 1906.

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Second amended bill, re-filed November 14, 1906.

Demurrer to second amended bill, filed November 14, 1906.

Order sustaining demurrer to second amended bill, filed November 14, 1906.

Decree dismissing the cause, filed February 11, 1907.

Petition for appeal, order allowing appeal, assignment of errors and bond, filed August 9, 1907.

Citation on appeal, with acceptance of service thereon and stipulation, filed this day.

This praecipe.

W. W. COTTON and

R. E. MOODY, J. P.

Attorneys for Complainant.

[Endorsed]: Praecipe. Filed in the U. S. Circuit Court, Western Dist. of Washington. Aug. 14, 1907. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Division.*

No. 1384.

THE COLUMBIA VALLEY RAILROAD COMPANY (a Corporation),

Complainant and Appellant,

vs.

THE PORTLAND AND SEATTLE RAILWAY COMPANY (a Corporation),

Defendant and Appellee.

Clerk's Certificate to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I, A. Reeves Ayres, Clerk of the Circuit Court of the United States for the Western District of Washington, do hereby certify the foregoing one hundred and twenty-eight (128) typewritten pages, numbered from 1 to 128, inclusive, to be a full, true and correct copy of the record and proceedings in the above and therein entitled cause as the same remain of record and on file in the office of the clerk of said court, and that the same constitute the record and appeal from the order, judgment and decree of the Circuit Court of the United States for the Western District of Washington, in said appeal mentioned.

I further certify that I hereto attach and herewith transmit the original citation issued in this cause.

I further certify that the cost of preparing the foregoing record on appeal is the sum of \$113.20, and that the said sum has been paid to me by W. W. Cotton and Ralph E. Moody, solicitor for the complainant and appellant.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Circuit Court, this 31st day of August, 1907.

[Seal]

A. REEVES AYRES,

Clerk.

By R. M. Hopkins,

Deputy Clerk.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 1384.

COLUMBIA VALLEY RAILROAD COMPANY,
Complainant,

vs.

PORTLAND & SEATTLE RAILWAY COMPANY,
Defendant.

Citation on Appeal (Original).

The President of the United States of America to
Portland & Seattle Railway Company, a Cor-
poration, Greeting:

You are hereby cited and admonished to be and
appear at the United States Circuit Court of Ap-
peals for the Ninth Circuit, to be held at the city
of San Francisco, State of California, within thirty
(30) days from the date of this writ, to wit, on the

8th day of September, 1907, pursuant to a notice of appeal and order of the court allowing the same, filed in the clerk's office of the Circuit Court of the United States for the Western District of Washington, Northern Division, wherein Columbia Valley Railroad Company is complainant and now appellant, and you are defendant and appellee, to show cause, if any there be, why the judgment rendered against the said complainant and appellant, as in said notice of appeal and order allowing the same mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States of America, this 9th day of August, 1907, and of the Independence of the United States the one hundred and thirty-second.

[Seal] C. H. HANFORD,
United States District Judge, Presiding in said
Court.

Due and personal service of the above citation and the receipt of a copy thereof is hereby admitted this 10th day of August, 1907.

JAMES B. KERR,
Attorney for Portland & Seattle Railway Com-
pany.

[Endorsed]: No. 1384. In the United States Circuit Court for the District of Washington, Northern Division. Columbia Valley R. R. Co., Complainant, vs. Portland & Seattle Ry. Co., Defendant. Citation. Filed in the U. S. Circuit Court, Western Dist. of Washington. Aug. 14, 1907. A. Reeves Ayres, Clerk. A. N. Moore, Dep. John P. Hartman, Attorney for ———, Burke Building, Seattle.

[Endorsed:] No. 1500. United States Circuit Court of Appeals for the Ninth Circuit. The Columbia Valley Railroad Company, Appellant, vs. The Portland & Seattle Railway Company, a Corporation, Appellee. Transcript of Record. Upon Appeal from the United States Circuit Court for the Western District of Washington, Northern Division. Filed September 6, 1907.

FRANK D. MONCKTON,

Clerk.

By Meredith Sawyer,

Deputy Clerk.